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Supp of Ct to 3d Supp Transcript

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902~~ 1903.

No. ~~117~~ 145.

THE UNITED STATES, PETITIONER,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY AND THE NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

CERTIFICATE FILED OCTOBER 20, 1902.
CERTIORARI AND RETURN FILED NOVEMBER 17, 1902.
(18705.)

18128

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 477.

THE UNITED STATES, PETITIONER,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY AND THE NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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In the United States Circuit Court of Appeals, Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY et al.,
Appellees.

Order Extending Time to Docket Cause.

It appearing that the time heretofore allowed for the filing of the transcript on appeal in the above-entitled cause is insufficient for the preparation of the record on said appeal, it is therefore

Ordered that said time be, and the same hereby is, extended sixty days from and after this date.

February 19, 1902.

C. H. HANFORD,
Judge.

[Endorsed]: No. 822. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Northern Pacific Railway Co. et al., Appellees. Order Extending Time to File Transcript on Appeal. Filed February 24, 1902. F. D. Monckton, Clerk.

In the Circuit Court of the United States for the District of Washington, Western Division.

July Term, 1897.

Be it remembered that on the 27th day of July, 1897, there was duly filed in said Circuit Court of the United States for the District of Washington, Western Division, a complaint, in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Washington, Western Division.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY, and the NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.

Complaint.

To the Honorable Judges of the Circuit Court of the United States of America, for the District of Washington, in Chancery sitting:

Your orators, the United States of America, bring this, their bill of complaint, against the Northern Pacific Railroad Company and the Northern Pacific Railway Company, defendants, and thereupon your orators complain

of the said defendants, and respectfully show unto your Honors:

I.

That on the 24th day of May, A. D. 1895, and on the 27th day of May, A. D. 1895, and at all times prior thereto, your orators were, and still are, the owners in fee of the lands situated in the Western Division of the District of Washington, and more particularly described as follows:

SE ¼ SE ¼, Sec. 1, T. 3 N. R. 1 E., containing 40 acres; NE ¼, Sec. 25, T. 3 N. R. 1 E., containing 160 acres; SW ¼, Sec. 1, T. 2 N. R. 2 E., containing 160 acres; NW ¼ NE ¼, Sec. 3, T. 2 N. R. 2 E., containing 39.60 acres; NE ¼ NW ¼, Sec. 3, T. 2 N. R. 2 E., containing 39.34 acres; S ½ NE ¼, Sec. 7, T. 2 N., R. 2 E., containing 80 acres; E ½ NW ¼, Sec. 7, T. 2 N. R. 2 E., containing 80 acres; Lots 3, 4, 5 and 6, Sec. 11, T. 2 N. R. 2 E., containing 113.24 acres; Lot 1, Sec. 21, T. 2 N., R. 2 E., containing 13.21 acres; W ½ NW ¼, Sec. 23, T. 2 N. R. 2 E., containing 80 acres; SE ¼ SW ¼, Sec. 23, T. 2 N., R. 2 E., containing 40 acres; SE ¼, Sec. 23, T. 2 N., R. 2 E., containing 160 acres; S ½ NE ¼, Sec. 25, T. 2 N., R. 2 E., containing 80 acres; NW ¼, Sec. 25, T. 2 N., R. 2 E., containing 160 acres; N ½ SW ¼, Sec. 25, T. 2 N., R. 2 E., containing 80 acres; SE ¼, Sec. 25, T. 2 N., R. 2 E., containing 160 acres; N. ½, SE ¼, Sec. 27, T. 2 N., R. 2 E., containing 80 acres; W ½ NW ¼, Sec. 5, T. 3 N., R. 2 E., containing 78.42 acres; SW ¼ NW ¼, Sec. 7, T. 3 N., R. 2 E., containing 41.18 acres; SE ¼ SE ¼, Sec. 9, T. 3 N., R. 2 E., containing 40 acres; SE ¼ NE ¼, Sec. 11, T. 3 N., R. 2 E., containing 40 acres; E ½ SE ¼, Sec. 17,

T. 3 N., R. 2 E., containing 80 acres; SW ¼ SW ¼, Sec. 19, T. 3 N., R. 2 E., containing 41.68 acres; NE ¼ NE ¼, Sec. 29, T. 3 N., R. 2 E., containing 40 acres; NW ¼ NW ¼, Sec. 31, T. 3 N., R. 2 E., containing 42.49 acres; NW ¼ NE ¼, Sec. 33, T. 3 N., R. 2 E., containing 40 acres; NE ¼, NW ¼, Sec. 33, T. 3 N., R. 2 E., containing 40 acres; E ½ SE ¼, Sec. 33, T. 3 N., R. 2 E., containing 80 acres; Lots 1, 2, 3, 4, Sec. 33, T. 3 N., R. 2 E., containing 93.59 acres; NE ¼, Sec. 1, T. 4 N., R. 2 E., containing 127.22 acres; NW ¼, Sec. 1, T. 4 N., R. 2 E., containing 137.86 acres; SE ¼, Sec. 1, T. 4 N., R. 2 E., containing 160 acres; All of Sec. 3, T. 4 N., R. 2 E., containing 604.10 acres; NW ¼ NE ¼, Sec. 5, T. 4 N., R. 2 E., containing 35.58 acres; SW ¼ NE ¼, Sec. 5, T. 4 N., R. 2 E., containing 40 acres; NE ¼ NW ¼, Sec. 5, T. 4 N., R. 2 E., containing 36.03 acres; S. ½ NW ¼, Sec. 5, T. 4 N., R. 2 E., containing 80 acres; SW ¼, Sec. 5, T. 4 N., R. 2 E., containing 160 acres; S ½ SE ¼, Sec. 5, T. 4 N., R. 2 E., containing 80 acres; N ½ NE ¼, Sec. 7, T. 4 N., R. 2 E., containing 80 acres; E ½ NW ¼, Sec. 7, T. 4 N., R. 2 E., containing 80 acres; E ½ SW ¼, Sec. 7, T. 4 N., R. 2 E., containing 80 acres; N ½ NW ¼, Sec. 9, T. 4 N., R. 2 E., containing 80 acres; SE ¼ NW ¼, Sec. 9, T. 4 N., R. 2 E., containing 40 acres; SW ¼, Sec. 9, T. 4 N., R. 2 E., containing 160 acres; S ½, SE ¼, Sec. 11, T. 4 N., R. 2 E., containing 80 acres; N ½ NE ¼, Sec. 13, T. 4 N., R. 2 E., containing 80 acres; SW ¼, NE ¼, Sec. 13, T. 4 N., R. 2 E., containing 40 acres; NW ¼, Sec. 13, T. 4 N., R. 2 E., containing 160 acres; NW ¼ SE ¼, Sec. 13, T. 4 N., R. 2 E., containing 40 acres; NE ¼, Sec. 17, T. 4 N., R. 2 E., containing 160 acres; NW ¼, SE ¼, Sec. 17,

T. 4 N., R. 2 E., containing 80 acres; SW ¼, SE ¼, Sec. 17, T. 4 N., R. 2 E., containing 40 acres; S ½ NW ¼, Sec. 19, T. 4 N., R. 2 E., containing 77.52 acres; SW ¼, Sec. 19, T. 4 N., R. 2 E., containing 155.28 acres; SE ¼, Sec. 19, T. 4 N., R. 2 E., containing 160 acres; NE ¼, Sec. 21, T. 4 N., R. 2 E., containing 160 acres; S ½ NW ¼, Sec. 21, T. 4 N., R. 2 E., containing 80 acres; SE ¼, Sec. 21, T. 4 N., R. 2 E., containing 160 acres; NW ¼ NE ¼, Sec. 23, T. 4 N., R. 2 E., containing 40 acres; NW ¼, SW¼, Sec. 23, T. 4 N., R. 2 E., containing 40 acres; S ½ NE ¼, Sec. 25, T. 4 N., R. 2 E., containing 80 acres; NW ¼ NW ¼, Sec. 25, T. 4 N., R. 2 E., containing 40 acres; N ½ SE ¼, Sec. 25, T. 4 N., R. 2 E, containing 80 acres; SE ¼ SE ¼, Sec. 25, T. 4 N., R. 2 E., containing 40 acres; N ½ NW ¼, Sec. 27, T. 4 N., R. 2 E., containing 80 acres; SW ¼ SE ¼, Sec. 29, T. 4 N., R. 2 E., containing 40 acres; E. ½ SE ¼, Sec. 31, T. 4 N., R. 2 E., containing 80 acres; SE ¼, NW ¼, Sec. 33, T. 4 N., R. 2 E., containing 40 acres; NE ¼, Sec. 1, T. 5 N., R. 2 E., containing 160.88 acres; NW ¼, Sec. 1, T. 5 N., R. 2 E., containing 162 acres; S ½ SE ¼, Sec. 1, T. 5 N., R. 2 E., containing 80 acres; NE ¼, SE ¼, Sec. 1, T. 5 N., R. 2 E., containing 40 acres; Lot 1, Sec. 3, T. 5 N., R. 2 E., containing 41.36 acres; Lot 2, Sec. 3, T. 5 N., R. 2 E., containing 41.20 acres; Lot 3, Sec. 3, T. 5 N., R. 2 E., containing 41.22 acres; Lot 4, Sec. 3, T. 5 N., R. 2 E., containing 41.15 acres; S ½, Sec. 3, T. 5 N., R. 2 E., containing 80 acres; SE ¼, Sec. 3, T. 5 N., R. 2 E., containing 160 acres; S ½ NE ¼, Sec. 5, T. 5 N., R. 2 E., containing 80 acres; Lots 1 and 2, Sec. 5, T. 5 N., R. 2 E., containing 82.77 acres; NE ¼, Sec. 13, T. 5 N., R. 2 E., containing 160

acres; NW ¼, Sec. 13, T. 5 N., R. 2 E., containing 160 acres; SE ¼, Sec. 13, T. 5 N., R. 2 E., containing 160 acres; SW ¼, Sec. 13, T. 5 N., R. 2 E., containing 160 acres; N ½ NW ¼, Sec. 21, T. 5 N., R. 2 E., containing 80 acres; SW ¼, NW ¼, Sec. 21, T. 5 N., R. 2 E., containing 40 acres; SE ¼, SW ¼, Sec. 25, T. 5 N., R. 2 E., containing 40 acres; SE ¼, Sec. 25, T. 5 N., R. 2 E., containing 160 acres; NE ¼, Sec. 27, T. 5 N., R. 2 E., containing 160 acres; E ½ NW ¼, Sec. 27, T. 5 N., R. 2 E., containing 80 acres; SW ¼ NW ¼, Sec. 27, T. 5 N., R. 2 E., containing 40 acres; SW ¼, Sec. 27, T. 5. N., R. 2. E., containing 160 acres; W. ½, SE ¼, Sec. 27, T. 5 N., R. 2 E., containing 80 acres; NE ¼ SE ¼, Sec. 27, T. 5. N., R. 2 E., containing 40 acres; E. ½ SW ¼, Sec. 31, T. 5 N., R. 2 E., containing 80 acres; NE ¼, Sec. 33, T. 5 N., R. 2 E., containing 160 acres; SE ¼, Sec. 33, T. 5 N., R. 2 E., containing 160 acres; SW ¼, Sec. 33, T. 5 N., R. 2 E., containing 160 acres; NE ¼, Sec. 35, T. 5 N., R. 2 E., containing 160 acres; E ½ NW ¼, Sec. 35, T. 5 N., R. 2 E., containing 80 acres; E ½ SW ¼, Sec. 35, T. 5 N., R. 2 E., containing 80 acres; SE ¼, Sec. 35, T. 5 N., R. 2 E., containing 160 acres; NE ¼, NW ¼, Sec. 3, T. 1 N., R. 3 E., containing 38.32 acres; NW ¼ NW ¼, Sec. 3, T. 1 N., R. 3 E., containing 38.16 acres; SW ¼, Sec. 3, T. 2 N., R. 3 E., containing 160 acres; NW ¼, NE ¼, Sec. 5, T. 2 N., R. 3 E., containing 41.39 acres; NE ¼ NW ¼, Sec. 5, T. 2 N., R. 3 E., containing 41.78 acres; NW ¼ NW ¼, Sec. 5, T 2 N., R. 3 E., containing 42.17 acres; N ½ NW ¼, Sec. 9, T. 2 N., R. 3 E., containing 80 acres; N ½ SW ¼, Sec. 9, T. 2 N., R. 3 E., containing 80 acres; SW ¼ SW ¼, Sec. 9, T. 2 N., R. 3 E., containing

40 acres; NE ¼, Sec. 13, T. 2 N., R. 3 E., containing 160 acres; NW ¼, Sec. 13, T. 2 N., R. 3 E., containing 160 acres; N ½ SW ¼, Sec. 13, T. 2 N., R. 3 E., containing 80 acres; SE ¼ SW ¼, Sec. 13, T. 2 N., R. 3 E., containing 40 acres; N ½ SE¼, Sec. 13, T. 2 N., R. 3 E., containing 80 acres; SE ¼ SE¼, Sec. 13, T. 2 N., R. 3 E., containing 40 acres; SW ¼ NW ¼, Sec. 15, T. 2 N., R. 3 E., containing 40 acres; W ½ SW ¼, Sec. 15, T. 2 N., R. 3 E., containing 80 acres; S ½ NW ¼, Sec. 19, T. 2 N., R. 3 E., containing 73.76 acres; SW ¼, Sec. 19, T. 2 N., R. 3 E., containing 152.28 acres; W ½ SE ¼, Sec. 19, T. 2 N., R. 3 E., containing 80.80 acres; SW ¼ NE ¼, Sec. 19, T. 2 N., R. 3 E., containing 40.40 acres; Lot 1, Sec. 19, T. 2 N., R. 3 E., containing 39.44 acres; NE ¼ NW ¼, Sec. 21, T. 2 N., R. 3 E., containing 40 acres; Lot 5, Sec. 21, T. 2 N., R. 3 E., containing 14.80 acres; SE ¼ NE ¼, Sec. 25, T. 2 N., R. 3 E., containing 40 acres; Lots 1, 3 and 4, Sec. 25, T. 2 N., R. 3 E., containing 54.28 acres; NE ¼ NW ¼, Sec. 27, T. 2 N., R. 3 E., containing 40 acres; NE ¼ NE ¼, Sec. 31, T. 2 N., R. 3 E., containing 40 acres; NW ¼ NE ¼, Sec. 33, T. 2 N., R. 3 E., containing 40 acres; NE ¼ NW ¼, Sec. 33, T. 2 N., R. 3 E., containing 40 acres; NE ¼, Sec. 35, T. 2 N., R. 3 E., containing 160 acres; E ½ NW ¼, Sec. 35, T. 2 N., R. 3 E., containing 80 acres; NE ¼ SW ¼, Sec. 35, T. 2 N., R. 3 E., containing 40 acres; NW ¼ SE ¼, Sec. 35, T. 2 N., R. 3 E., containing 40 acres; S ½ NW ¼, Sec. 3, T. 3 N., R. 3 E., containing 80 acres; Lots 3 and 4, Sec. 3, T. 3 N., R. 3 E., containing 82.77 acres; NE ¼, Sec. 5, T. 3 N., R. 3 E., containing 162.19 acres; NW ¼, Sec. 5, T. 3 N., R. 3 E., containing 162.95 acres; N ½ SW ¼, Sec.

5, T. 3 N., R. 3 E., containing 80 acres; N ½ SE ¼, Sec. 5, T. 3 N., R. 3 E., containing 80 acres; NE ¼ Sec. 9, T. 3 N., R. 3 E., containing 160 acres; SW ¼, Sec. 9, T. 3 N., R. 3 E., containing 160 acres; SW ¼ S W ¼, Sec. 11, T. 3 N., R. 3 E., containing 40 acres; SW ¼ SW ¼, Sec. 13, T. 3 N., R. 3 E., containing 40 acres; All of Sec 15, T. 3 N., R. 3 E., containing 640 acres; NE ¼ NE ¼, Sec. 19, T. 3 N., R. 3 E., containing 40 acres; E ½ SE ¼, Sec. 19, T. 3 N., R. 3 E., containing 80 acres; All of Sec. 23, T. 3 N., R. 3 E., containing 640 acres; All of Sec. 25, T. 3 N., R. 3 E., containing 640 acres: All of Sec. 27, T. 3 N., R. 3 E., containing 640 acres; NW ¼, Sec. 29, T. 3 N., R. 3 E., containing 160 acres; SW ¼, Sec. 29, T. 3 N., R. 3 E., containing 160 acres; NE ¼, Sec. 33, T. 3 N., R. 3 E., containing 160 acres; W ½ NW ¼, Sec. 33, T. 3 N., R. 3 E., containing 80 acres; SE ¼ NW ¼, Sec. 33, T. 3 N., R. 3 E., containing 40 acres; N ½ SW ¼, Sec. 33, T. 3 N., R. 3 E., containing 80 acres; N ½ SE ¼, Sec. 33, T. 3 N., R. 3 E., containing 80 acres; SE ¼ SE ¼ Sec. 33, T. 3 N., R. 3 E., containing 40 acres, All of Sec. 35, T. 3 N., R. 3 E., containing 640 acres; N ½ NE ¼ Sec. 3, T. 4 N., R. 3 E., containing 59.01 acres; NW ¼ NW ¼, Sec. 3, T. 4 N., R. 3 E., containing 28.33 acres; S ½ NW ¼, Sec. 3, T. 4 N., R. 3 E., containing 80 acres; SW ¼, Sec. 3, T. 4 N., R. 3 E., containing 160 acres; SE ¼, Sec. 3, T. 4 N., R. 3 E., containing 160 acres; NE ¼ NE ¼, Sec. 5, T 4 N., R. 3 E., containing 28.07 acres; S ½ NE¼, Sec. 5 T. 4 N., R. 3 E., containing 80 acres; NW ¼, Sec. 5, T. 4 N., R. 3 E., containing 135.74 acres; SW ¼, Sec. 5, T. 4 N., R. 3 E., containing 160 acres; SW ¼, Sec. 5, T. 4 N., R. 3 E., containing 160 acres; SE ¼, Sec. 5, T. 4 N., R. 3 E.,

taining 601.82 acres; SW ¼, Sec. 11, T. 4 N., R. 3 E., containing 160 acres; All of Sec. 15, T. 4 N., R. 3 E., containing 640 acres; E ½ NW ¼, Sec. 17, T. 4 N., R. 3 E., containing 80 acres; SE ¼, Sec. 17, T. 4 N., R. 3 E., containing 160 acres; All of Sec. 21, T. 4 N., R. 3 E., containing 640 acres; N ½ NW ¼, Sec. 23, T. 4 N., R. 3 E., containing 80 acres; All of Sec. 27, T. 4 N., R. 3 E., containing 640 acres; S. ½ SE¼, Sec. 29, T. 4 N., R. 3 E., containing 80 acres; E ½ NE ¼, Sec. 31, T. 4 N., R. 3 E., containing 80 acres; SW ¼ NE ¼, Sec. 31, T. 4 N., R. 3 E., containing 40 acres; W ½ NW ¼, Sec. 31, T. 4 N., R. 3 E., containing 59.01 acres; NW ¼ SW ¼, Sec. 31, T. 4 N., R. 3 E., containing 29.79 acres; SE ¼, Sec. 31, T. 4 N., R. 3 E., containing 160 acres; All of Sec 33, T. 4 N., R. 3 E., containing 640 acres; SW ¼, Sec. 7, T. 5 N., R. 3 E., containing 157.48 acres; SW ¼, Sec. 9, T. 5 N., R. 3 E., containing 160 acres; SE ¼, Sec. 9, T. 5 N., R. 3 E., containing 160 acres; E ½ SE ¼, Sec. 15, T. 5 N., R. 3 E., containing 80 acres; SW ¼ SE ¼, Sec. 15, T. 5 N., R. 3 E., containing 40 acres; All of Sec. 17, T. 5 N., R. 3 E., containing 640 acres; SW ¼, Sec. 19, T. 5 N., R. 3 E., containing 159.40 acres; NW ¼, Sec. 23, T. 5 N., R. 3 E., containing 160 acres; SW ¼, Sec. 23, T. 5 N., R. 3 E., containing 160 acres; All of Sec. 29, T. 5 N., R. 3 E., containing 640 acres; NW ¼, Sec. 31, T. 5 N., R. 3 E., containing 160.24 acres; SW ¼, Sec. 31, T. 5 N., R. 3 E., containing 160.08 acres; SE ¼, Sec. 31, T. 5 N., R. 3 E., containing 160 acres; All of Sec. 33, T. 5 N., R. 3 E., containing 640 acres; W ½ NE ¼, Sec. 35, T. 5 N., R. 3 E., containing 80 acres; NW ¼, Sec. 35, T. 5 N., R. 3 E., containing 160 acres;

SW ¼, Sec. 35, T. 5 N., R. 3 E., containing 160 acres; W ½ SE ¼, Sec. 35, T. 5 N., R. 3 E., containing 80 acres; W ½ NW ¼, Sec. 15, T. 2 N., R. 4 E., containing 80 acres; W ½ SW ¼, Sec. 15, T. 2 N., R. 4 E., containing 80 acres; All of Sec. 17, T. 2 N., R. 4 E., containing 640 acres; NE ¼, Sec. 19, T. 2 N., R. 4 E., containing 160 acres; Lot 3, Sec. 19, T. 2 N., R. 4 E., containing 34.57 acres; E ½ SW ¼, Sec 19, T. 2 N., R. 4 E., containing 80 acres; SE ¼, Sec. 19, T. 2 N., R. 4 E., containing 160 acres; All of Sec. 21, T. 2 N., R. 4 E., containing 640 acres; NE ¼, Sec. 29, T. 2 N., R. 4 E., containing 160 acres; NW ¼, Sec. 29, T. 2 N., R. 4 E., containing 160 acres; SW ¼, Sec. 29, T. 2 N., R. 4 E., containing 160 acres; Lot 1, Sec. 31, T. 2 N., R. 4 E., containing 31.98 acres; NE ¼ NE ¼, Sec. 1, T. 3 N., R. 1 E., containing 40.06 acres; SW ¼ NE ¼, Sec. 1, T. 3 N., R. 1 E., containing 40 acres; SW ¼ NW ¼,Sec. 1, T. 3 N., R. 1 E., containing 40 acres; SW ¼, Sec. 1, T. 3 N., R. 1 E., containing 160 acres; SE ¼ NE ¼, Sec. 3, T. 3 N., R. 1 E., containing 40 acres; SW ¼ NE ¼, Sec. 3, T. 3 N., R. 1 E., containing 40 acres; NE ¼ SW ¼, Sec. 3, T. 3 N., R. 1 E., containing 40 acres; SE ¼ SW ¼, Sec. 3, T. 3 N., R. 1 E., containing 40 acres; E ½ NW ¼, Sec. 11, T. 3 N., R. 1 E., containing 80 acres; SE ¼, Sec. 11, T. 3 N., R. 1 E., containing 160 acres; SE ¼ NW ¼, Sec. 13, T. 3 N., R. 1 E., containing 40 acres; NE ¼ SW ¼, Sec. 13, T. 3 N., R. 1 E., containing 40 acres; S ½ SW ¼, Sec. 13, T. 3 N., R. 1 E., containing 80 acres; NE ¼, Sec. 23, T. 3 N., R. 1 E., containing 160 acres; SE ¼ NW ¼, Sec. 23, T. 3 N., R. 1 E., containing 40 acres; NE ¼ NE¼, Sec. 1, T. 4 N., R. 1 E., containing 39.03 acres; SE ¼, NE ¼, Sec. 1, T. 4 N.,

R. 1 E., containing 40 acres; NE ¼ SW ¼, Sec. 1, T. 4 N., R. 1 E., containing 40 acres; N ½ SE ¼, Sec. 1, T. 4 N., R. 1 E., containing 80 acres; W ½ NE ¼, Sec. 9, T. 4 N., R. 1 E., containing 80 acres; W ½ SW ¼, Sec. 11, T. 4 N., R. 1 E., containing 80 acres; SE ¼, Sec. 35, T. 4 N., R. 1 E., containing 160 acres; SW ¼, Sec. 35, T 4 N., R. 1 E., containing 160 acres; N ½ NW ¼, Sec. 3, T. 5 N., R. 1 E., containing 77.33 acres; NE ¼, Sec. 3, T. 5 N., R. 1 E., containing 159.61 acres; Lot 5. Sec. 11, T. 5 N., R. 1 E., containing 9.95 acres; Lot 8, Sec. 11, T. 5 N., R. 1 E., containing 31.20 acres; E ½ NE ¼, Sec. 13, T. 5 N., R. 1 E., containing 80 acres; E ½ SW ¼, Sec. 13, T. 5 N., R. 1 E., containing 80 acres; SE ¼, Sec. 13, T. 5 N., R. 1 E., containing 160 acres; SW ¼ NE ¼, Sec. 15, T. 5 N., R. 1 E., containing 40 acres; SW ¼, Sec. 15, T. 5 N., R. 1 E., containing 160 acres; NW ¼ SE ¼, Sec. 15, T. 5 N., R. 1 E., containing 40 acres; S ½ SE ¼, Sec. 15, T. 5 N., R. 1 E., containing 80 acres; SE ¼, Sec. 21, T. 5 N., R. 1 E., containing 160 acres; NE ¼ NE ¼, Sec. 23, T. 5 N., R. 1 E., containing 40 acres;W ½ NE ¼, Sec. 23, T. 5 N., R. 1 E., containing 80 acres; E ½ NW ¼, Sec. 23, T. 5 N., R. 1 E., containing 80 acres; NW ¼ SE ¼, Sec. 23, T. 5 N., R. 1 E., containing 40 acres; SW ¼, Sec. 23, T. 5 N., R. 1 E., containing 160 acres; NW ¼, Sec. 25, T. 5 N., R. 1 E., containing 160 acres; E ½ SW ¼, Sec. 25, T. 5 N., R. 1 E., containing 80 acres; SE ¼, Sec. 25, T. 5 N., R. 1 E., containing 160 acres; W ½, NE ¼, Sec. 27, T. 5 N., R. 1 E., containing 80 acres; NW ¼, Sec. 27, T. 5 N., R. 1 E., containing 160 acres; SW ¼, Sec. 27, T. 5 N., R. 1 E., containing 160 acres; NE ¼ NE ¼, Sec. 33, T. 5 N., R. 1 E., containing 40 acres; Lot 4, Sec. 1, T. 6

N., R. 1 E., containing 39.07 acres; SW ¼ NW ¼, Sec. 1, T. 6 N., R. 1 E., containing 40 acres; Lot 1, Sec. 1, T. 6 N., R. 1 E., containing 39.94 acres; Lot 2, Sec. 1, T. 6 N., R. 1 E., containing 39.85 acres; *Lot* 3, Sec. 1, T. 6 N., R. 1 E., containing 39.76 acres; S ½ NE ¼ Sec. 1, T. 6 N., R. 1 E., containing 80 acres; SE ¼ NW ¼, Sec. 1, T. 6 N., R. 1 E., containing 40 acres; SW ¼, Sec. 1, T. 6 N., R. 1 E., containing 160 acres; SE ¼, Sec. 1, T. 6 N., R. 1 E., containing 160 acres; NE ¼, Sec. 3, T. 6 N., R. 1 E., containing 157.68 acres; NW ¼, Sec. 3, T. 6 N., R. 1 E., containing 158.48 acres; SE ¼, Sec. 3, T. 6 N., R. 1 E., containing 160 acres; SW ¼, Sec. 3, T. 6 N., R. 1 E., containing 160 acres; NE ¼, Sec. 9, T. 6 N., R. 1 E., containing 160 acres; SE ¼, Sec. 9, T. 6 N., R. 1 E., containing 160 acres; All of Sec. 11, T. 6 N., R. 1 E., containing 640 acres; All of Sec. 13, T. 6 N., R. 1 E., containing 640 acres; All of Sec. 15, T. 6 N., R. 1 E., containing 640 acres; NE ¼, Sec. 21, T. 6 N., R. 1 E., containing 160 acres; SE ¼, Sec. 21, T. 6 N., R. 1 E., containing 160 acres; All of Sec. 23, T. 6 N., R. 1 E., containing 640 acres; All of Sec. 25, T. 6 N., R. 1 E., containing 640 acres; All of Sec. 27, T. 6 N., R. 1 E., containing 640 acres; NE ¼, Sec. 33, T. 6 N., R. 1 E., containing 160 acres; SE ¼, Sec. 33, T. 6 N., R. 1 E., containing 160 acres; All of Sec. 35, T. 6 N., R. 1 E., containing 640 acres; All of Sec. 1, T. 7 N., R. 1 E., containing 642.36 acres; All of Sec. 3, T. 7 N., R. 1 E., containing 641 acres; NE ¼, Sec. 9, T. 7 N., R. 1 E., con g 160 acres; SE ¼, Sec. 9, T. 7 N., R. 1 E., containing 160 acres; All of Sec. 11, T. 7 N., R. 1 E., containing 640 acres; All of Sec. 13, T. 7 N., R. 1 E., containing 640 acres; All of Sec. 15, T. 7 N.,

R. 1 E., containing 640 acres; NE ¼, Sec. 21, T. 7 N., R. 1 E., containing 160 acres; SE ¼, Sec. 21, T. 7 N., R. 1 E., containing 160 acres; All of Sec. 23, T. 7 N., R. 1 E., containing 640 acres; All of Sec. 25, T. 7 N., R. 1 E., containing 640 acres; All of Sec. 27, T. 7 N., R. 1 E., containing 640 acres; NE ¼, Sec. 33, T. 7 N., R. 1 E., containing 160 acres; SE ¼, Sec. 33, T. 7 N., R. 1 E., containing 160 acres; All of Sec. 35, T. 7 N., R. 1 E., containing 640 acres; E. ½ NE ¼, Sec. 11, T. 8 N., R. 1 E., containing 80 acres; NE ¼ SE ¼, Sec. 11, T. 8 N., R. 1 E., containing 40 acres; S ½ SE ¼, Sec. 11, T. 8 N., R. 1 E., containing 80 acres; All of Sec. 13, T. 8 N., R. 1 E., containing 640 acres; All of Sec. 23, T. 8 N., R. 1 E., containing 640 acres; All of Sec. 25, T. 8 N., R. 1 E., containing 640 acres; E. ½ NE ¼, Sec. 27, T. 8 N., R. 1 E., containing 80 acres; SE ¼, Sec. 27, T. 8 N., R. 1 E., containing 160 acres; All of Sec. 35, T. 8 N., R. 1 E., containing 640 acres; NW ¼ NW ¼, Sec. 7, T. 4 N., R. 2 E., containing 40 acres; SW ¼ NW ¼, Sec. 7, T. 4 N., R. 2 E., containing 40 acres; NW ¼ SW ¼, Sec. 7, T. 4 N., R. 2 E., containing 40 acres; SW ¼ SW ¼, Sec. 7, T. 4 N., R. 2 E., containing 40 acres; Lot 4, Sec. 7, T. 5 N., R. 2 E., containing 40.30 acres; E ½ NW ¼, Sec. 19, T. 5 N., R. 2 E., containing 80 acres; W ½ NW ¼, Sec. 19, T. 5 N., R. 2 E., containing 80.99 acres; E. ½ SW ¼, Sec. 19, T. 5 N., R. 2 E., containing 80 acres; W. ½ SW ¼, Sec. 19, T. 5 N., R. 2 E., containing 81.37 acres; SE ¼, Sec. 19, T. 5 N., R. 2 E., containi[illegible]0 acres; Lots 1, 2, 3, 4, Sec. 31, T. 5 N., R. 2 E., conta[illegible]ng 162.40 acres; W ½ NW ¼, Sec. 5, T. 6 N., R. 2 E., containing 79.69 acres; W ½ SW ¼, Sec. 5, T. 6 N., R. 2 E., containing 80 acres; All of Sec.

7, T. 6 N., R. 2 E., containing 631.46 acres; NE ¼, NE ¼, Sec. 1, T. 2 N., R. 3 E., containing 39.82 acres; NW ¼ NE ¼, Sec. 1, T. 2 N., R. 3 E., containing 39.94 acres; S ½ NE ¼, Sec. 1, T. 2 N., R. 3 E., containing 80 acres; NE ¼ NW ¼, Sec. 1, T. 2 N., R. 3 E., containing 40.06 acres; NW ¼ NW ¼, Sec. 1, T. 2 N., R. 3 E., containing 40.18 acres; S ½ NW ¼, Sec. 1, T. 2 N., R. 3 E., containing 80 acres; SW ¼, Sec. 1, T. 2 N., R. 3 E., containing 160 acres; SE ¼, Sec. 1, T. 2 N., R. 3 E., containing 160 acres.

II.

Your orators further show unto your Honors that the defendant, the Northern Pacific Railroad Company, is a corporation organized and existing under and by virtue of an act of Congress, approved on the 2d day of July, 1864, entitled "An Act granting lands to aid in the construction of a Railroad and Telegraph Line from Lake Superior to Puget Sound on the Pacific Coast, by the Northern Route."

III.

Your orators further show that in a certain suit and proceeding begun in the Circuit Court of the United States, for the Eastern District of Wisconsin, wherein the Farmers' Loan and Trust Company, of New York, a corporation organized pursuant to the laws of the state of New York, and then and now existing and doing business as such, was plaintiff, and the Northern Pacific Railroad Company, and others, were their defendants, in which said suit and proceeding the said Circuit Court, having then full and competent jurisdiction in the premises, proceeded to foreclose a certain mortgage against

the said Northern Pacific Railroad Company, and thereafter, and during the pendency of said action, an ancillary bill was filed and subsequent proceedings were had in the same case in the Circuit Court of the United States, for the District of Washington, and in the Northern Division thereof, in which said proceedings the said Circuit Court for the District of Washington, and the Northern Division thereof, having full power in the premises, did, on or about the 25th day of July, 1895, order, direct, and decree that all of the interest of the said Northern Pacific Railroad Company in the above described, and other lands, be sold to satisfy the said mortgage and other indebtedness of said company, and that the said lands were sold to the Northern Pacific Railway Company, which last-named company, your orators are informed and believe, is a corporation, duly organized and existing, but under what law or laws the said last-named railway company was organized your orators are not informed, and cannot state, but believe the said company was organized as a corporation under the laws of the State of Wisconsin.

IV.

And your orators further allege that the said Northern Pacific Railway Company have acquired the said lands as the successor in interest of the said Northern Pacific Railroad Company, if they have acquired the same, and hold the same by reason of purchase at a public sale held at the city of Seattle, in the State of Washington, under and by virtue of a decree of the said courts dated on the 3d day of August, 1895; and that

the said lands, so acquired, are held by the said railway company under the said decrees and by reason of the said sale, as successor of the said Northern Pacific Railroad Company, which said railway company now claims all of the right, title and interest which was formerly claimed or owned, in all of the lands or property of the said railroad company, and it is therefore made a defendant herein.

V.

Your orators further show that by the terms of the said act of July 2d, 1864, the Congress of the United States granted to the said Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and for other purposes, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty (20) alternate sections per mile, on each side of the said railroad line, as said company might adopt, through the territories of the United States whenever on the line thereof, the United States should have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights at the time the line of said railroad shall be definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office.

VI.

And your orators further show that by virtue of the said act of July 2d, 1864, a grant was made to the said Northern Pacific Railroad Company for a railroad via

the valley of the Columbia river to a point at or near Portland, Oregon, and that subsequent to the said grant, and on the 31st day of May, 1870, by a joint resolution of the Congress of the United States, lands were granted to aid the said company in constructing a road north of Portland to Puget Sound, which said grant conferred the land under the same terms and conditions as did the act of July 2d, 1864; that no map of definite location was filed in the office of the Commissioner of the General Land Office of the United States by the said Northern Pacific Railroad Company prior to the passage of the said joint resolution, and that the said Northern Pacific Railroad Company filed its map of general route in pursuance of the said joint resolution in the office of the Commissioner of the General Land Office of the United States on the 13th day of August, 1870, and said Northern Pacific Railroad thereupon showed a continuous line via the Valley of the Columbia River to Portland, Oregon, and from Portland, Oregon, extending northward from said city to Puget Sound, the location of the section of the said road between Portland, Oregon, and Wallula, Washington, coterminus with said lands, was definitely fixed by the filing of the map of definite location, which said map was filed by the said company in the office of the Commissioner of the General Land Office on the 14th day of May, 1874, locating said road from Portland eastward; and said land is otherwise unappropriated public lands of the United States.

VII.

Your orators further show unto your Honors that that

portion of said road, as shown on the map of definite location, being about 180 miles in extent, embracing all of said road between Wallula, Washington, and Portland, Oregon, was, and still is, wholly unconstructed.

VIII.

Your orators further show unto your Honors that the lands herein described lie east of a terminal line drawn at right angles to the last twenty-five miles of said road as shown upon the map of general route and of definite location east of Portland, and they also fall within the primary limits of the grant appertaining to the road as located and constructed north of Portland, or between Portland, Oregon, and the city of Tacoma, Washington.

IX.

Your orators further allege and show unto your Honors that that grant for the portion of the road between Portland and Puget Sound was made by the aforesaid joint resolution of May 31st, 1870 (16 Stat. at Large, 378); that under the act of July 2d, 1864, a grant was made to the Northern Pacific Railroad Company, as aforesaid, for a road via the valley of the Columbia river to a point at or near Portland; that when the said company filed its map of general route on the 13th day of August, 1870, said continuous line, as aforesaid, was shown on said map via the valley of the Columbia river; that the limits of the extent of the said grant to the said railroad company were adjusted as continuous limits, without regard to any conflict between said grants; that the said railroad was unconstructed, as aforesaid, on the 29th day of September, 1890, at which date an act of Congress was

passed (26 Stats. at Large, 466), which forfeited to the United States all lands theretofore granted to any State or to any corporation to aid in the construction of a railroad, opposite to and coterminous with the portion of any such road not then completed.

X.

Your orators further show unto your Honors that the grant to that portion of the road east of Portland, was forfeited by the act of forfeiture of September 29th, 1890, for the reason that said lands were opposite to and coterminous with said portion of the said road as located upon its map of general route east of Portland, and because such lands were coterminous with an uncompleted section of said road of more than twenty-five miles in extent, more than the said last twenty-five miles of said road having never been completed, all the said lands were forfeited, as aforesaid, by the said act of September 29th, 1890, and by the terms and provisions of the said act of forfeiture none of the lands so forfeited inure by reason of such forfeiture to any other grant to the said road, and none of the said mentioned lands inure to the Northern Pacific Railroad Company by virtue of its grant of May 31st, 1870, but all of said lands reverted to, became, and now are the public lands of the United States; that the limits of said grant to the said Northern Pacific Railroad Company for the portion of its road via the valley of the Columbia River and east of Portland overlaps the subsequent grant for that portion of the said road north of Portland, and that the said latter grant, to the extent that the same conflicts with the prior

grant of the said Northern Pacific Railroad Company, fails, and the said lands, as aforesaid, are restored to the public domain, and that all of the lands described in this complaint fall within that portion of the grant forfeited by reason of the said Northern Pacific Railroad Company failing to construct its road from Wallula, Washington, to Portland, Oregon, because said lands were appropriated and reserved from the said grant of land of May 31st, 1870, because said lands were at that time subject to the prior grant of the said Northern Pacific Railroad Company.

XI.

Your orators further show unto your Honors that notwithstanding that on the 13th and 23d days of May, 1895, and at all times subsequent to the 29th day of September, 1890, the said lands were forfeited to the United States, and that the United States were the sole and exclusive owners thereof, in fee, and that the said lands were held by the United States; and notwithstanding the fact that the officers of the Interior Department of the United States, and the President thereof, were deprived of and possessed no legal right, power, or authority, or jurisdiction to convey said lands, or any part thereof, to the said company, yet, so it is, that the said officers of the said Interior Department and the President of the United States, being ignorant of the fact that said lands had been forfeited to the United States by the said act of September 29th, 1890, and being uninformed that the said lands had been appropriated prior to the joint resolution of May 31st, 1870, and that the same were exempted from the operation of the said grant to the said railroad, yet

their said officers, believing that the said lands were properly patentable to the Northern Pacific Railroad Company by virtue of the aforesaid acts and joint resolution of Congress, and that the same were unappropriated at the time of the construction of the said line of road between Tacoma and Portland, which said road, as aforesaid, was constructed subsequent to the filing of said map of definite location and prior to the patenting of the lands herein set forth, and believing that said lands were subject to the said grant and passed to the said company by virtue of the said last-mentioned grant, and being mistaken and misinformed of the truth and facts concerning the condition of the said lands and the construction of the said road, and being requested and importuned by the said Northern Pacific Railroad Company thereto, did, by mistake and inadvertence, erroneously issue and deliver to the said Northern Pacific Railroad Company, on the 23d day of May, 1895, and on the 27th day of May, 1895, patents, in due form of law, conveying to the said Northern Pacific Railroad Company the legal title to the said hereinbefore described mentioned tracts of land; but that the said patents were issued to the said company without any consideration whatever other than the pretended claim of the said railroad to the said lands by virtue of the said grants.

XII.

Your orators further show that on the 27th day of April, 1896, and on the 13th day of August, 1896, the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, made due demand, in writing, upon the Northern Pacific Railroad

Company for the reconveyance of the hereinbefore described tracts of land, and that in response to the said demands, so made in pursuance of law, which demand directed the said Northern Pacific Railroad Company, within ninety (90) days from the date of the receipt of said notice and request, to reconvey said lands in question to the United States of America, and further notified the said company that in case the said demand was not complied with that the matter would be submitted to the Department with the recommendation that suit be instituted with view to the recovery of said lands, said notice being in accordance with the provisions of a statute approved March 3d, 1887 (24th Stat. at Large, page 555), and was in all respects in proper legal form; that thereafter the said company, through its resident and duly authorized attorneys Messrs. Britton and Gray, of the city of Washington, District of Columbia, notified the Department that the said Northern Pacific Railroad Company declined to make such reconveyance for the reason, as above stated, and as was then stated in said refusal, in writing, that the said Northern Pacific Railroad Company claimed that it had earned the said described lands by virtue of the construction of its road, and was therefore justly entitled to the issuance of patents for the same; and the said company, on said ground, refused to reconvey the said lands; and that the said Northern Pacific Railroad Company does still refuse to comply with the said demand so made by the Secretary of the Interior, through the Commissioner of the General Land Office; and that the said company has refused and still refuses

to relinquish or reconvey said lands, or to surrender the patents theretofore wrongfully and erroneously issued by the said Department and by the said company obtained, as the said company was in duty bound to do.

XIII.

Your orators further show that the said patents to the said Northern Pacific Railroad Company were erroneously issued, as aforesaid; and the said deed of sale, made in pursuance of the decrees, to the Northern Pacific Railway Company, cloud the title to the said mentioned tracts of land, and that there now exists by reason there of a cloud upon the title of your orators to the said lands, and every part thereof, which has interfered with, and still does interfere with the free use and disposition of the said lands, and every part thereof, under the laws of Congress; that the said cloud so caused, as aforesaid, has greatly injured and depreciated, and still does greatly injure and depreciate, the value of the said lands, and every part thereof, forasmuch, therefore, as your orators are without adequate remedy in said premises, except in a court of equity, where such matters are properly cognizable, and to the end that the Northern Pacific Railroad Company and the Northern Pacific Railway Company may be required, according to the best and utmost of their knowledge, remembrance, information, and belief, respectively, to make such full, true, direct, and perfect answers (but not under oath, the answer under oath being hereby waived), to all and singular the matters and things herein set forth and alleged as fully and particularly as if the same were repeated and said defendants,

and each of them, distinctly interrrogated thereto and thereupon.

Your orators pray that the said patents so erroneously issued from the United States to the said Northern Pacific Railroad Company for the above-described lands, and the sale of the said lands to the Northern Pacific Railway Company, and each of them, be surrendered up, canceled, annuled, set aside and held for naught; that your orators have such other and further relief in the premises as equity and good conscience may require and to your Honors shall seem meet.

May it please your Honors to grant the writ of subpoena in chancery, directed to the said defendants, and each of them, commanding them, and each of them, under a certain penalty to be therein limited, that they be and appear before your Honors on a day certain, therein named, then and there full, true, direct and perfect answers make to all and singular the terms, and stand to perform and abide by such further order, direction, and decree as to your Honors shall seem meet; and that your orators may have and recover from the said defendants all reasonable costs and disbursements herein expended and incurred.

JOSEPH McKENNA,
Attorney General of the United States.

WM. H. BRINKER,
United States Attorney for the District of Washington.

F. C. ROBERTSON,
Assistant United States Attorney.

And afterwards, to wit, on the 27th day of July, 1897, there was duly issued out of said court in said cause a subpoena, in words and figures as follows, to wit:

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Judicial Circuit, District of Washington, Western Division.

IN EQUITY.

Summons.

The President of the United States of America, Greeting, to the Northern Pacific Railway Company and the Northern Pacific Railroad Company:

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom in Tacoma, on the sixth day of September, A. D. 1897, to answer a bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court, this 27th day of July, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the 122d.

[Seal of the Court] A. REEVES AYRES,
Clerk.

By _____,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of September next, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

[Seal of the Court]

A. REEVES AYRES,
Clerk.

By _____,
Deputy Clerk.

United States Marshal's Office,
District of Washington. } ss.

I hereby certify that I received the within writ on the 27th day of July, 1897, and personally served the same on the 2d day of August, 1897, by delivering to and leaving with Thomas Cooper, agent of the Northern Pacific Railway Company for service of process within District of Washington, said defendants named therein personally, at the city of Tacoma, county of Pierce, in said District, an attached copy thereof. After diligent search I have been unable to find any official of the Northern Pacific Railroad Company within this District.

Tacoma, August 2, 1897.

JAMES C. DRAKE,
United States Marshal.
By F. L. Crosby,
Deputy.

[Endorsed]: Filed in the United States Circuit Court, August 2, 1897. A. Reeves Ayres, Clerk. By Sam'l D. Bridges, Deputy.

And afterwards, to wit, on the 4th day of October, 1897, there was duly filed in said court in said cause a joint and several answer of the Northern Pacific Railroad Company and the Northern Pacific Railway Company, in the words and figures following, to wit:

In the United States Circuit Court, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY and NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.

Joint and Several Answer of the Northern Pacific Railroad Company and the Northern Pacific Railway Company.

These defendants now, and at all the times hereafter, saving to themselves all and all manner of benefit or advantage of exceptions or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised is material or necessary for them to make answer to, answering say:

I.

Defendants deny that the complainant is now, or at any time since July 2, 1864, has been, the owner of the lands described in the bill of complaint, or any thereof; and defendants aver that the said lands passed to the Northern Pacific Railroad Company under and by virtue of the act of Congress approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast, by the Northern Route," and the joint Resolution of Congress approved May 31, 1870, entitled "A Resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," as herein more particularly set forth; and that said railroad company has, except as hereinafter set forth, since remained the owner thereof.

II.

These defendants admit that the Northern Pacific Railroad Company is a corporation as alleged in said bill of complaint.

III.

These defendants admit that in a certain suit and proceeding begun in the United States Circuit Court for the Eastern District of Wisconsin, wherein the Farmers' Loan and Trust Company of New York, a corporation organized pursuant to the laws of the State of New York, and then and now existing and doing business as such, was complainant and the Northern Pacific Railroad Com-

pany and others were defendants, in which said suit and proceedings the said Court then had full and competent jurisdiction in the premises, the said Court proceeded to foreclose a certain mortgage against said Northern Pacific Railroad Company; and admit that thereafter and during the pendency of said action an ancillary bill was filed and subsequent proceedings were had in the same case in the United States Circuit Court for the District of Washington, Northern Division, and that in said proceedings, the said United States Circuit Court for the District of Washington, Northern Division, having full power in the premises, did on or about the 25th day of July, 1896, order, direct, and decree that all of the interest of the said Northern Pacific Railroad Company in the lands described in the bill of complaint and any other lands, be sold to satisfy the said mortgage and other indebtedness of said railroad company; and admit and aver that the lands so sold were sold to the Northern Pacific Railway Company, and that the said last-named Company is a corporation duly organized and existing under the laws of the State of Wisconsin.

But these defendants further aver that prior to the date of said sale to the said Northern Pacific Railway Company many of the said lands described in said bill of complaint had been contracted by instruments in writing to be sold by the said Northern Pacific Railroad Company, or for and on its account by certain receivers thereof; that many of said contracts had been fulfilled by the parties therein contracting with said railroad company and the receivers thereof, and that said railroad company and the receivers thereof had made, executed and deliv-

ered to such contracting parties instruments in writing which were in form sufficient to convey and which did convey to said parties all of the right, title, interest, claim and demand of the said Northern Pacific Railroad Company in and to the said lands so sold and conveyed. That the terms and provisions of others of said contracts had not been fulfilled by the parties therein named as contracting with said Northern Pacific Railroad Company and the receivers thereof, and the full payment of the purchase price of the lands so contracted to be sold had not been made by the said parties to the said railroad company or to the receivers thereof; that since the sale and conveyance under said decree to the said Northern Pacific Railway Company as aforesaid some of said parties who had theretofore contracted with the said Northern Pacific Railroad Company and with the receivers thereof, for the conveyance of certain of said lands, have fulfilled the terms and provisions of their said contracts, and this defendant the said Northern Pacific Railway Company, has, pursuant to the terms and provisions of said contracts, made, executed and delivered to said parties instruments in writing sufficient to convey and which did convey to said parties the said lands so contracted to be sold and conveyed to said parties. That exhibit "A" hereunto annexed correctly sets forth the various parcels of land contracted to be sold by the said Northern Pacific Railroad Company or by the receivers thereof, as aforesaid, which were so sold and conveyed by said railroad company or by the receivers thereof, and correctly sets forth the date of said contracts, the amount of the purchase price of said lands, the amount thereof paid to

the railroad company and the amount paid to said receivers, the date of the deeds of conveyance, and the names of the grantees. That exhibit "B" hereunto annexed correctly sets forth the various parcels of land which were so contracted to be sold by the said Northern Pacific Railroad Company or the receivers thereof, and which have heretofore been conveyed by the defendant the Northern Pacific Railway Company pursuant to the terms and provisions of said contracts; that said exhibit further correctly sets forth the date of said contracts, the amount of the purchase price of said lands, the date of the deeds of conveyance and the names of the grantees, and the amount of the consideration paid to the said Northern Pacific Railroad Company, the amount thereof paid to the receivers of said Northern Pacific Railroad Company, and the amount of such consideration paid to the said Northern Pacific Railway Company. That exhibit "C" hereunto annexed correctly sets forth the various parcels of land contracted to be sold by the said Northern Pacific Railroad Company or the receivers thereof which have not heretofore been conveyed pursuant to the terms and provisions of said contracts; that said exhibit also correctly sets forth the date of said contracts, the consideration for which said lands were so agreed to be sold and conveyed as aforesaid, the portion of that consideration paid to the Northern Pacific Railroad Company, the portion thereof paid to the receivers of said Northern Pacific Railroad Company, and the portion thereof paid to this defendant, the Northern Pacific Railway Company, and also correctly sets forth the names of the parties so con-

tracting with the said Northern Pacific Railroad Company.

That the several parcels of land so described in said schedules marked exhibits "A," "B," and "C," and all thereof, were purchased by the respective persons named as purchasers in said exhibits for a valuable consideration and in good faith, as part of the grant to said Northern Pacific Railroad Company.

IV.

These defendants deny that the said Northern Pacific Railway Company have acquired all of the lands described in said bill of complaint as the successor in interest of the said Northern Pacific Railroad Company, and deny that they have acquired and hold the same by reason of the purchase thereof under and by virtue of the decree of said Court; but they admit that the Northern Pacific Railway Company acquired the interest of the said Northern Pacific Railroad Company in and to said lands which had not theretofore been sold and conveyed by the said Northern Pacific Railroad Company or the receivers thereof as the successor in interest of the said Northern Pacific Railroad Company, and that they acquired the same and hold the same by reason of the purchase at public sale held at the city of Seattle, in the State of Washington, under and by virtue of the decree of said Courts, dated August 3, 1896, and admit that the lands and the interest therein so acquired are held by the said railway company under the said decrees and by reason of the said sale, as the successor of the said Northern Pacific Railroad Company; but they deny

that the said Northern Pacific Railway Company now claims all the right, title and interest which was formerly claimed or owned in all of the lands or property of the said Northern Pacific Railroad Company, but they admit that the said railway company now claims all of the right, title, and interest in and to said lands which was claimed or owned by the said Northern Pacific Railroad Company at the date of the conveyance to the said Northern Pacific Railway Company as aforesaid, and which has not been since sold or conveyed by the said Northern Pacific Railway Company.

V.

And for further answer to the matters and things set forth and charged in said bill, and particularly to the matters and things set forth and charged in the 5th and 6th paragraphs thereof, these defendants say they admit that by the terms of the act of Congress approved July 2, 1864, the Congress of the United States granted to said Northern Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and for other purposes, certain lands, substantially as in the 5th paragraph of said bill of complaint set forth. They deny that by virtue of the act of July 2, 1864, a grant was made to the said Northern Pacific Railroad Company for a railroad via the valley of the Columbia River to a point at or near Portland, Oregon, but they admit that provision was made in said act of July 2, 1864, for the location and construction of a branch railroad and telegraph line of said Northern Pacific Railroad Company

via the valley of the Columbia River to a point at or near Portland, Oregon, and that a grant to aid in the construction of said branch line was provided for in said act. They admit that on the 31st day of May, 1875, by a joint resolution of the Congress of the United States, certain lands were granted to aid the company in constructing the road north of Portland to Puget Sound, but beg leave to refer to said joint resolution for the true contents and interpretation thereof. They admit that no map of definite location was filed in the office of the Commissioner of the General Land Office of the United States by the said Northern Pacific Railroad Company prior to the passage of the said joint resolution of May 31, 1870. They deny that the said Northern Pacific Railroad Company filed its map of general route in pursuance of said joint resolution, in the office of the Commissioner of the General Land Office of the United States on the 13th day of August, 1870, but they admit that said company caused a map of its general route to be filed in the office of the Commissioner of the General Land Office on the 13th day of August as hereinafter more particularly set forth. They deny that the said Northern Pacific Railroad Company showed upon said map a general route and continuous line via the valley of the Columbia river to Portland, Oregon, and from Portland, Oregon, extending northward to Puget Sound, but they admit that the said Northern Pacific Railroad Company showed upon said map a continuous line via the valley of the Columbia River to a point at or near Vancouver, in the Territory (now State) of Washington, and from thence extending northwardly to Puget Sound. They deny that the location

of the section of said road between Portland, Oregon, and Wallula, Washington, was definitely fixed by the filing of a map of definite location in the office of the Commissioner of the General Land Office on the 14th day of May, 1874, or at any other time, and deny that the section of the said road between Portland, Oregon, and Wallula, Washington, or any thereof, was ever definitely located or definitely fixed by the filing of a map of definite location in the office of the Commissioner of the General Land Office, or elsewhere, and they deny that the land described in the bill of complaint is otherwise unappropriated public lands of the United States.

And for further answer these defendants say that by the terms and provisions of the said act of Congress approved July 2, 1864, the said Northern Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as should be determined by said company, within the territory of the United States, on a line north of the 45th degree of latitude, to some point on Puget Sound; with a branch, via the valley of the Columbia River, to a point at or near Portland, in the State of Oregon.

By the third section of said act provision was made as follows: "That there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast,

* * * * every alternate section of public land, not mineral designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of the said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections. . . . . Provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road, may be selected as above provided; and provided further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal.'"

By section 4 of said act it was further provided that whenever said company should have twenty-five consecutive miles of any portion of said railroad and telegraph

line ready for the service contemplated, the President of the United States should appoint three commissioners to examine the same; and if it should appear that such twenty-five consecutive miles of said road and telegraph line had been completed in a good, substantial and workmanlike manner, as in all other respects required by said act, the commissioner should so report to the President of the United States and patents of lands, as aforesaid, should be issued to said company, confirming to said company the right and title to said lands situated opposite to, and coterminus with, said completed section of said road; and that whenever, from time to time, twenty-five additional consecutive miles should have been constructed, completed and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then the patents should be issued to the said company, conveying the additional sections of land as aforesaid; and so on as fast as every twenty-five miles of said road should be so completed. That by said section 6 of the said act it was further enacted and provided as follows, to wit:

"And be it further enacted, that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption

rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby extended to all other lands on the line of said road, when surveyed, excepting these hereby granted to said company. And the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale."

That the said railroad company duly accepted the terms, conditions and impositions of said act, and signified such acceptance in writing under the corporate seal of the said company, duly executed pursuant to the direction of its board of directors, first had and obtained, and within two years after the passage of said act, to-wit: December 29, 1864, served such acceptance on the President of the United States.

That by the joint resolution approved May 31, 1870, entitled "A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road, and to secure the same by mortgage, and for other purposes," the Congress of the United States, among other things, provided as follows, to wit:

"That the Northern Pacific Railroad Company be and hereby is authorized . . . . to locate and construct under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget's Sound via the valley of the Columbia River with the right to locate and construct its branch from some convenient point on its main

trunk line across the Cascade mountains to Puget Sound."

And for a more complete statement of the provisions of said acts and joint resolutions of Congress, these defendants beg leave to refer thereto.

That the said Northern Pacific Railroad Company having surveyed the general route of said railroad line extending from a point on Lake Superior in the State of Wisconsin, to a point on Puget Sound, on the 26th day of July, 1870, transmitted to the Secretary of the Interior maps showing the line of said general route. That the said maps, so transmitted, were received by the said secretary July 30, 1870, and thereafter, to wit, August 13, 1870, the said Secretary of the Interior transmitted the said maps to the commissioner of the general land office with the following instructions:

"Department of the Interior,

Washington, D. C., August 13, 1870.

Sir: I transmit herewith two maps showing the designated route of the Northern Pacific Railroad.

You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, pre-emption, homestead and other disposal the odd numbered sections not sold, reserved, and to which prior rights have not attached, within 20 miles on each side of the route, and in like manner direct those officers in Washington Territory to withhold such odd numbered sections as lie south of the town of Steilacoom. The unsurveyed as well as surveyed lands will be included in the reservation, and you will direct the local

officers to give notice accordingly; and as the township plats are received by them, they will make the proper notes of reservation thereon.

The withdrawal will take effect from the receipt of the order at the local office.

Very respectfully, your obedient servant,

J. D. COX,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office."

That on said August 13, 1870, said maps, so approved by the Secretary or the Interior, were duly filed in the office of the Commissioner of the General Land Office. That after the filing of the said maps in the office of the Commissioner of the General Land Office, as aforesaid, the said commissioner caused to be prepared and made maps and records of the general land office designating the limits of the lands in the said territory of Washington reserved for the said railroad company on and within twenty miles of said line of general route so fixed as aforesaid; and thereafter, to wit, September 20, 1870, the said commissioner transmitted to the register and receiver of the United States district land office at Vancouver, Washington, a diagram showing that portion of the said general route of the Northern Pacific Railroad so fixed as aforesaid extending through said land district with limits designated thereon including all land coterminus with said line and within twenty miles thereof in said land district; and transmitted with said diagram the following letter of instructions, to wit:

"Department of the Interior,
General Land Office,
September 20, 1870.

Gentlemen: I transmit herewith a diagram showing the designated route of the Northern Pacific Railroad act of July 2, 1864, and by direction of the Secretary of the Interior you are requested to withhold from sale or location, pre-emption or homestead entry, all odd numbered sections of public lands falling within the limits of 20 miles as designated on this map.

You will also increase the price to $2.50 per acre the even-numbered sections within these limits, and dispose of them at that ratability under the pre-emption and homestead laws only, no private entry of the same being admissible until these lands have been offered at the increased price.

This order will take effect from the date of its receipt by you, and you are requested to acknowledge without delay the time of its receipt.

Very respectfully,
JOS. S. WILSON,
Commissioner.

Register and Receiver, Vancouver, Wash."

That the said diagram and letter of instructions were received and filed in said United States District land office at Vancouver, Washington, the 17th day of October, 1870.

That thereafter, to wit, October 27th, 1870, the Secretary of the Interior instructed the Commissioner of the General Land Office as follows, to wit:

"Department of the Interior,
Washington, D. C., October 27, 1870.

Sir: In my letters of the 13th and 16th August last a withdrawal of lands for 20 miles on each side of the route of the Northern Pacific Railroad in Washington Territory was ordered to be made. That withdrawal will be increased to 40 miles on each side of the route, and you will issue instructions accordingly.

Very respectfully, your obedient servant,

J. D. COX,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office."

And that November 21, 1870, the said Commissioner of the General Land Office, pursuant to said instructions, transmitted to said register and receiver the following order, to wit:

"Department of the Interior,
General Land Office,
November 21, 1870.

Gentleman: The Secretary of the Interior having ordered the withdrawal of 20 additional miles on each side of the Northern Pacific Railroad in your district, I herewith inclose a map showing the extent of such additional withdrawal, and you are directed to withhold from sale or location pre-emption, or homestead entry, all odd-numbered sections of land in the additional limits of 20 miles as indicated on the map.

The even-numbered sections you will increase in price to $2.50 per acre and dispose of at that ratability, but only under pre-emption and homestead laws.

This order will take effect from the date of the receipt of this letter by you and you are requested to notify us of the day it may be so received.

Very respectfully,

JOS. S. WILSON,

Commissioner.

Register and Receiver, Vancouver, Wash."

That the said order and map were received and filed in the said United States district land office at Vancover, Washington, December 8, 1870.

That the general route of said road so fixed ran near where the town of Wallula now stands, thence via the valley of the Columbia River to a point near Vancouver, thence northerly to Puget Sound.

That all of the lands described in the bill of complaint herein then were, and at all times since have been, in the district of lands for sale at the said district land office at Vancouver, Washington, and were coterminus with and within 40 miles of said line of general route so fixed as aforesaid, and were within the limits of said orders of withdrawal. That the said lands were, at the time of fixing the said line of general route, and at the dates when the said orders of withdrawal were received at said United States district land office at Vancouver, Washington, public lands to which the United States had full title, not reserved, sold, granted or otherwise appropriated and were free from pre-emption or other claims or rights. That said lands were and are non-mineral in character.

That the said Northern Pacific Railroad Company hav-

ing surveyed and definitely located that portion of its said railroad and telegraph line extending from Kalama to Tenino, in the Territory (now State) of Washington, definitely fixed the same by filing a plat thereof, duly approved by the Secretary of the Interior, in the office of the Commissioner of the General Land Office, on the 13th day of September, 1873; that upon the filing of said map the said commissioner caused to be made and designated upon the maps and records of his said office the limits of the lands granted to said railroad company by the said act of Congress approved July 2, 1864, and the joint resolution approved May 31, 1870, to wit, the 40 and 50 mile limits on each side of and coterminus with said line of definite location, the first named being the lands in place, the second being the limits of idemnity provided for in act of Congress of July 2, 1864; and at the same time the said commissioner caused to be made and designated upon said maps and records the terminal limits of the lands coterminus with said line of definite location, which said terminal limits were perpendicular to the general course of said line of definite location extending from Kalama to Tenino as aforesaid. That thereafter the said commissioner, under the direction of the Secretary of the Interior, transmitted to the United States district land office at Vancouver, Washington, that being the land office for the district in which the said lands were situate, a copy of said map showing that portion of the definite location of said railroad and telegraph line extending from Kalama to Tenino as aforesaid, with the 40 mile, or place limits, and the 50 mile or indemnity limits indicated thereon, and transmitted

with said diagram the following letter of instructions, to wit:

"Department of the Interior,
General Land Office,
Washington, D. C., Jany. 21st, 1874.

Register and Receiver, Vancouver, W. T.

Gentlemen: I transmit herewith a diagram showing the forty and fifty mile limits of the land grant to the Northern Pacific Railroad Company in your district, as now definitely fixed, and you are hereby directed to withhold from sale or entry all the odd-numbered sections falling within those limits, not heretofore withdrawn upon the general route of the road, the limits of which are shown on the diagram in green.

The even sections within the forty mile limits are to be held at the double minimum price of $2.50 per acre, but the even sections between the forty and fifty mile limits at $1.25 per acre only.

This additional withdrawal of odd sections, and increase in price of the even sections, takes effect from September 13th, 1873, the date of the filing of the map of definite location in this office by the Company.

Be pleased to acknowledge the date of the receipt of this letter.

Very respectfully,
WILLIS DRUMMOND,
Commissioner."

The said letter of instructions and the diagram were received and filed in the said district land office February 10, 1874.

A portion of the lands described in the bill of complaint herein were coterminus with and within forty miles of the said line of definite location and within the place limits of said grant as shown upon the said diagram; that said lands were, at the date of filing said map of definite location in the office of the Commissioner of General Land Office, and at the time said diagram and order of withdrawal were received and filed in the said district land office at Vancouver, as aforesaid, public lands, not reserved, sold, granted or otherwise appropriated and were free from pre-emption or other claims or rights except such claims and rights as had theretofore attached in favor of the Northern Pacific Railroad Company upon the fixing of the general route of its said railroad coterminus with said lands as hereinbefore set forth.

That the said Northern Pacific Railroad Company having surveyed and definitely located that portion of its said railroad and telegraph line extending from said Kalama in Washington, to Portland, in the State of Oregon, fixed such line of definite location by causing a plat thereof, duly approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office; that said plat was so filed September 22, 1882. That upon the filing of said plat the said commissioner caused to be made and designated upon the maps and records of his said office, the limits of the lands granted to said company by the said act of Congress approved July 2, 1864, and the joint resolution approved May 31, 1870, to wit, the 20 and 30 mile limits on each side of said line of definite location; the first

named being the lands in place, the second being the limits of indemnity provided for in the act of Congress approved July 2, 1864. That at the same time the said commissioner caused to be made and designated upon said records the terminal limits of the lands coterminus with the said line of definite location from Kalama to Portland as aforesaid; the said northern terminal limit coinciding with the southern terminal limit of the grant coterminus with the line from Tenino to Kalama fixed as hereinbefore set forth, and the said southern terminal limit being perpendicular to the general course of the said line of definite location.

That portion of the said lands described in the bill of complaint herein not coterminus with, and within 40 miles of, said line of definite location extending from Tenino to Kalama as aforesaid, were coterminus with and within 20 miles of said line of definite location extending from Kalama to Portland as aforesaid; and said lands were, at the date of filing said map of definite location in the office of the Commissioner of the General Land Office as aforesaid, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and were free from pre-emption or other claims or rights except such claims or rights as may have attached thereto in favor of said Northern Pacific Railroad Company upon the fixing of the general route of its said railroad coterminus with the said lands as hereinbefore set forth.

That the said Northern Pacific Railroad Company proceeded with the construction of its railroad and telegraph line extending from Kalama to a point near

Tenino, 65 miles distant from Kalama, and having completed said railroad and telegraph line in a good substantial and workmanlike manner, the same was examined by commissioners appointed by the President of the United States for that purpose and was, in 1873, reported by said commissioners to have been so constructed in all respects as required by the acts of Congress; and thereupon, to wit, September 10, 1873, that portion of said railroad and telegraph line was accepted by the President of the United States, who directed that patents for the lands due on account of the construction thereof should be issued to said company.

That thereafter, to wit, in 1882 and 1883, the said railroad company proceeded with and completed the construction of its said railroad and telegraph line extending from a point on the left bank of the Columbia river opposite Kalama to the city of Portland in the State of Oregon; that the President of the United States having appointed commissioners to examine the said portion of said railroad and telegraph line, the said commissioners examined the same and reported that it had been constructed in a good, substantial and workmanlike manner in all respects as required by the act of Congress; that thereupon, to wit, October 4th, 1883, the President of the United States accepted said railroad and telegraph line and directed that patents for the lands earned by the construction thereof should be issued to the said Northern Pacific Railroad Company.

VI.

And these defendants further say, that the portion of

the said Northern Pacific railroad and telegraph line extending from the town of Wallula, in the Territory (now State) of Washington, via the valley of the Columbia River, to a point at or near Portland, Oregon, has never been definitely located, and that no plat thereof has been filed with the Secretary of the Interior, or in the office of the Commissioner of the General Land Office, except the said map of the line of general route as hereinbefore set forth; but they admit and aver that said portion of said railroad and telegraph line extending between Wallula, Washington, and Portland, Oregon, still is wholly unconstructed.

VII.

These defendants admit that the lands described in the bill of complaint herein lie east of a terminal line drawn at right angles to the last 25 miles as shown upon the map of general route, east of Portland, and that they also fall within the place or primary limits of the grant pertaining to the road as located and constructed north of Portland and between Portland, Oregon, and the city of Tacoma, Washington; but they deny that said lands lie east of the terminal line drawn at right angles to the last 25 miles of road as shown upon any map of definite location east of Portland, and aver that there is no map of definite location on the Northern Pacific railroad east of Portland, or between Portland, Oregon, and Wallula, Washington, or of any portion of said road between said points.

VIII.

These defendants deny that the grant for the portion

of the said Northern Pacific Railroad between Portland, Oregon, and Puget Sound, was made by the joint resolution of Congress approved May 31, 1870, but submit that said grant was made by the act of Congress approved July 2, 1864, as amended by the said joint resolution of Congress approved May 31, 1870; they deny that under the act of Congress approved July 2, 1864, a grant was made to the Northern Pacific Railroad Company for a road via the valley of the Columbia River, to a point at or near Portland, Oregon, and beg leave to refer to said act for the true contents and interpretation thereof. They admit that when the said Northern Pacific Railroad Company filed its map of general route on the 13th day of August, 1870, a continuous line was shown on said map via the valley of the Columbia River, but they deny that the limits and extent of the grant to said Northern Pacific Railroad Company were adjusted as continuous limits without regard to any conflict between the said grants, or were adjusted otherwise than as hereinbefore set forth; and they deny that there was any conflict between the said grants, or that there was more than one grant provided for in the act of Congress approved July 2, 1864, as modified by the joint resolution of May 31, 1870. Defendants admit that by an act of Congress approved September 29, 1890, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads and for other purposes," the Congress of the United States resumed the title to all lands theretefore granted to any State or to any corporation, to aid in the construction of

a railroad opposite to and coterminous with the portion of any such railroad not completed and in operation for the consideration or benefit for which said lands were granted, but defendants beg leave to refer to said act for the true contents and interpretation thereof. And these defendants admit that no portion of the Northern Pacific railroad or telegraph line extending between Portland, Oregon, and Wallula, Washington, was constructed or completed at the date of the passage of said act, or has since been constructed or completed.

IX.

These defendants deny that the grant to that portion of the road east of Portland, Oregon, was forfeited by the said act of Congress approved September 29, 1890, and aver that the said acts of July 2, 1864, and the acts and joint resolutions of Congress supplemental thereto and amendatory thereof, had never attached to any lands opposite to or coterminous with the portion of the said road between Portland, Oregon, and Wallula, Washington, for the reason that the line of that portion of said road had never been definitely located or fixed; and they deny that none of the lands described in said bill inured to the Northern Pacific Railroad Company by virtue of its grant of May 31, 1870; and deny that all or any of said lands reverted to, became or now are public lands of the United States; and they submit that the title to the said lands described in the said bill of complaint having vested in the said Northern Pacific Railroad Company under and by virtue of the proceedings hereinbefore set forth, remained unaffected by the provisions

of the said act of Congress approved September 29, 1890. Defendants deny that the limits of the grant to the said Northern Pacific Railroad Company for the portion of its road via the valley of the Columbia River, and east of Portland, Oregon, overlaps the subsequent grant for that portion of said road north of Portland; and deny that the said latter grant to the extent that it conflicts with the prior grant to the said Northern Pacific Railroad Company, fails; and deny that the said lands, or any thereof, are restored to the public domains; and deny that all or any of the lands described in the bill of complaint herein fall within that portion of the grant forfeited by reason of the said Northern Pacific Railroad Company failing to construct its road from Wallula, Washington, to Portland, Oregon; and deny that said lands were appropriated and reserved from the said grant of land of May 31, 1870; and deny that there is any overlap or conflict between a subsequent and prior grant; and deny that the said joint resolution of May 31, 1870, made a separate and independent grant, or a grant subsequent to the grant provided for in the act of Congress approved July 2, 1864; but these defendants submit that the act of Congress approved July 2, 1864, as amended by the joint resolution of Congress approved May 31, 1870, provided for the location and construction of the main line of the Northern Pacific Railroad to some point on Puget Sound via the valley of the Columbia River, with the privileges, grants and duties provided for in the act of Congress approved July 2, 1864, with the right to locate and construct a branch line from some

convenient point on its main trunk line across the Cascade mountains to Puget Sound, with like privileges, grants and duties, and that the said grant to aid in the construction of the main line of said road extending via the valley of the Columbia River and to Puget Sound, constituted one continuous and undivided grant.

X.

These defendants deny that on the 13th and 23d days of May, 1895, and at all, or any other time subsequent to the 29th day of September, 1890, the lands described in the bill of complaint herein were forfeited to the United States and deny that the United States were the sole and exclusive owners thereof in fee or at all, or of any thereof; and deny that the said lands, or any thereof, were held by the United States; and deny that at any time prior to the issuance and delivery of the patents therefor to the said Northern Pacific Railroad Company, the officers in the Interior Department of the United States, and the President of the United States, were deprived of and possessed no legal right, power, or authority to convey the said lands or any part thereof, to the said company, but aver the fact to be that under the terms and provisions of the said act of Congress approved July 2, 1864, and the joint resolution of Congress approved May 31, 1870, the said officers of the Interior Department of the United States and the President of the United States, were authorized, and it became and was their duty to issue letters patent under the great seal of the United States, conveying and confirming the title to the said lands to the said Northern Pacific Rail-

road Company. These defendants deny that the officers of the Interior Department of the United States and the President of the United States, were ignorant or misinformed as to any of the facts with reference to said lands, and deny that said lands have been forfeited to the United States by the said act of Congress approved September 29, 1890, and deny that the said lands had been appropriated prior to the joint resolution of May 31, 1870, and deny that the same were exempt from the operation of the said grant to the said Northern Pacific Railroad Company. And these defendants admit that the said officers, believing (and said defendants submit, rightfully believing) that the said lands were properly patentable to the Northern Pacific Railroad Company by virtue of the aforesaid acts and joint resolution of Congress, and that the same were unappropriated at the time of the construction of the said line of road between Tacoma, Washington, and Portland, Oregon (which said road was constructed as hereinbefore set forth, and at no other time whatsoever), and that the said lands were subject to the said grant and passed to the said Northern Pacific Railroad Company by virtue of said grant issued and delivered to the said Northern Pacific Railroad Company on or about the 23d and 27th days of May, 1895, patents in due form of law confirming to said Northern Pacific Railroad Company the legal title to the said described lands; but these defendants deny that the said officers were mistaken and misinformed of the facts concerning the condition of said lands or the construction of said road; and deny that said letters patent were is-

sued by mistake or inadvertance, and deny that the said patents were issued to the said company without any consideration whatever other than the pretended claim of the said railroad company to the said land by virtue of the said grants, but defendants aver that said letters patent were issued to the said company under the terms and provisions of the said acts and joint resolutions of Congress, and in consideration of the compliance of the said Northern Pacific Railroad Company with the terms, provisions and conditions of the said acts and joint resolutions.

XI.

Defendants admit that on or about the 27th day of April, 1896, and on or about the 13th day of August, 1896, the Commissioner of the General Land Office, under the direction of the Secretary of the Interior, made demand in writing upon the Northern Pacific Railroad Company for the reconveyance of the lands described in said bill of complaint; that said demands were made substantially as set forth in paragraph 12 of said bill, and that the said company declined to make such reconveyance substantially as set forth in said paragraph 12 of said bill, and that said defendants still refuse to comply with the demand so made by the Secretary of the Interior through the Commissioner of the General Land Office, and defendant admits that it has refused and still refuses to relinquish or reconvey said lands, or any thereof, or to surrender the patents issued by the said Department, but denies that said patents were issued wrongfully or erroneously.

XII.

These defendants deny that the said patents to the said Northern Pacific Railroad Company were erroneously issued, and deny that the said patents and the said deed of sale made to the said Northern Pacific Railway Company clouds, or that there now exists by reason thereof, a cloud upon the title of the United States to the said lands, or any thereof, and deny that the said United States has any title in or to any part or parcel of said lands.

XIII.

And these defendants by protestation, not confessing all or any of the matters and things in conplainant's bill of complaint mentioned and contained, to be true in the manner and form as the same are therein set forth and alleged, or otherwise than as hereinbefore set out and alleged and not waiving, contradicting or denying any of the matters or things hereinbefore alleged, but wholly relying thereon, for further answer and for plea to the whole of said bill say:

(a.) That prior to the issuance of said patents confirming to the said Northern Pacific Railroad Company the lands described in the bill of complaint herein, the said United States required the said Northern Pacific Railroad Company to pay to it, and the said Northern Pacific Railroad Company did pay to it, and the said United States accepted and received the sum of $———, for the purpose of reimbursing the said United States for the cost of surveying the lands described in said bill of complaint, and of preparing and issuing to said railroad company said letters patent; that the said

United States has not refunded or offered to refund to said railroad company, or to its representatives or successors in interest, or to anyone in its or their behalf, said sums of money, or any part thereof, but still retains the same.

(b.) Defendants further say that the said United States at all times prior to July 18, 1895, construed and interpreted the act of Congress approved July 2, 1864, and the acts and joint resolutions supplemental thereto and amendatory thereof, as conveying to said company all lands within the limits of the grants coterminus with the line of said Northern Pacific Railroad as definitely located from Portland, Oregon, northwardly to Puget Sound, which were public lands of the United States not reserved, sold, granted, or otherwise appropriated, and which were free from pre-emption or other claims or rights at the time when the line of said road coterminus therewith was definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office, and so construed said grant that the lands coterminus with the general route of said road extending between Portland, Oregon, and Wallula, Washington, were not excepted or excluded from the grant made to aid in the construction of that portion of the road extending from Portland, Oregon, northwardly to Puget Sound, and at all times prior to said date of July 18, 1895, said United States construed and interpreted the said act of Congress approved September 29, 1890, as leaving unmodified and unaffected the title to all lands which were coterminus with the constructed line of said Northern Pacific rail-

road extending from Portland, Oregon, northwardly to Puget Sound; that the said railroad company and its representatives relied upon this interpretation of said laws by the said United States; that at the date when the line of said railroad authorized to be constructed by the act of July 2, 1864, and the joint resolution of May 31, 1870, was definitely fixed, and at the date when the letters patent for the lands described in the bill of complaint were issued, there were vacant public indemnity lands from which said railroad company could have selected other lands in lieu of those described in said bill, but relying upon the said interpretation of said acts and joint resolution of Congress as aforesaid, and (if such interpretation was erroneous) misled thereby, and relying upon the said letters patent, the said Northern Pacific Railroad Company and its representatives failed and neglected so to do.

Defendants further say, that after the lines of the said railroad and telegraph were definitely fixed and the said road constructed, and at divers times prior to July 18, 1895, the said United States interpreting said acts and joint resolutions of Congress as aforesaid, reserved, sold, granted and otherwise disposed of large quantities of public indemnity lands coterminus with said lines so authorized to be located and constructed under the terms and provisions of said act of July 2, 1864, and said joint resolution of May 31, 1870, and did not retain sufficient public indemnity lands to indemnify its grantee under the act of 1864, and the joint resolution of May 31, 1870, for said lands, and there does not now remain any lands within said indemnity lines from which said grantee can obtain

indemnity in lieu of the lands described in said bill, and defendants submit that the said complainant ought not now to be heard to say that said lands were wrongfully patented to said company.

(c) Defendants further say that at the date when the line of said Northern Pacific railroad authorized to be constructed under the terms and provisions of said act of July 2, 1864, and said joint resolution approved May 31, 1870, was definitely fixed and indicated upon a plat filed in the office of the Commissioner of the General Land Office, large quantities of lands within the place limits of said grant had been reserved, sold, granted or otherwise disposed of, and said company was compelled to resort to the lands within the indemnity limits to make good the quantity of lands granted to it to aid in the construction of said railroad and telegraph lines. That the United States, disregarding its contract in that behalf, did not cause the lands granted by the act of Congress of July 2, 1864, and the joint resolution of May 31, 1870, to be surveyed as fast as required by the construction of said Northern Pacific Railroad, and neglected and refused to adjust said grant or to ascertain and determine what lands were excepted from said grant and what passed thereunder, and a large portion of said grant is yet unsurveyed and still other large portions thereof unadjusted; that because of such failures on behalf of said United States, said grantee, under the said act of July 2, 1864, and said joint resolution of May 31, 1870, has been greatly hindered and delayed in and prevented from making selections of lands in lieu of the losses for which it is authorized to take indemnity. That

while the United States has thus hindered, delayed and prevented the securing of indemnity lands by its said grantee for the losses for which it was and is entitled to have indemnified it, the said United States, disregarding its contract with the said grantee in that behalf, has reserved, sold, granted and otherwise disposed of, to others than to said grantee, large quantities of land, both surveyed and unsurveyed, within the indemnity limits, and there does not now remain within such indemnity limits a sufficient quantity of lands undisposed of to enable said grantee to obtain from the said United States, or the United States to convey to said grantee, the quantity of lands which, by virtue of said act and joint resolution, the said grantee was to receive and the said United States was to convey in consideration of the construction of said railroad and telegraph lines.

And defendants aver that both the quantity of lands thus reserved, sold, granted or otherwise disposed of by the said United States, within the said indemnity limits, since the location and construction of said railroad, coterminus therewith, and the area of the deficiency in said grant, is greatly in excess of the area of the lands described in complainant's bill of complaint and that the amounts received by the said United States in consideration of such sales, grants and other disposition of the lands so wrongfully sold, granted or otherwise disposed of by the United States, is vastly in excess of the Government price and of the value of the lands described in said bill.

(d) That the said defendant, the Northern Pacific Railway Company, purchased the lands described in said

bill of complaint and which had not theretofore been conveyed by the said Northern Pacific Railroad Company and its representatives, from the said Northern Pacific Railroad Company, paying therefor large sums of money; that the said railway company so purchased the said lands in good faith, without any notice or knowledge of any defect in the title of said Northern Pacific Railroad Company therein or thereto, or in the title acquired by said railway company from said railroad company, it the said railway company, believing that the said railroad company was the legal and equitable owner of said lands and of each and all thereof, and vested with full right to convey the same.

All of which matters and things these defendants aver to be true, and they plead the same to the said bill and to the relief therein demanded. And these defendants say that they do not now claim any right, title or interest in or to the lands described in said bill of complaint or any thereof, which have been heretofore sold or conveyed as hereinbefore set forth, and these defendants disclaim all right, title and interest to the said estate and premises, and to every part thereof.

And further answering defendants deny each and every allegation in complainant's bill of complaint herein contained, except as hereinbefore in this answer admitted or alleged to be true.

And having thus made answer to said bill these defendants pray to be hence dismissed with their costs.

CROWLEY & GROSSCUP,

F. M. DUDLEY,

Solicitors for Defendants, the Northern Pacific Railroad Company and Northern Pacific Railway Company.

Exhibit "A."

Date of Contract.	Names of Grantees.	Part of Section.
July 21, 1891,	Lewis J. Mosier,	S. ½ of SW. ¼,
Aug. 12, 1891,	Leonard Dake,	Lot 1,
July 31, 1891,	William H. H. Taylor,	W. ½ of NW. ¼,
Sept. 24, 1891,	George C. Hitchcock,	SW. ¼ of SE. ¼,
July 11, 1891,	Martin H. Kendig,	NW. ¼ of SE. ¼,
Aug. 27, 1891,	Carrie Anderson,	NW. ¼ of NW. ¼,
Aug. 18, 1891,	Charles H. Crawford,	E. ½ of NW. ¼,
Oct. 14, 1891,	George Lamson,	NE. ¼ of SW. ¼,
Aug. 13, 1891,	Charles M. Landerholm,	N. ½ of NE. ¼,
June 9, 1893,	School Dist. No. 46 Clark Co.,	SW. ¼ SW. ¼ NE. ¼ NW. ¼,
Sept. 24, 1891,	Paul Schultze,	S. ½ of NE. ¼,
Sept. 8, 1891,	Ira E. Spencer,	NE. ¼,
Aug. 27, 1891,	Thomas O'Hara,	S. ½ of NE. ¼,
Aug. 12, 1891,	Elias Carlson,	S. ½ of NW. ¼,
Aug. 18, 1891,	Edmond J. Anrys,	Lots 1 & 2, & S. ½ NE. ¼,
July 15, 1891,	Ferdinand Paeschel,	N. ½ NE. ¼ & SW. ¼ NE. ¼,
Nov. 17, 1891,	Dorothea Maetz,	SE. ¼ of NE. ¼,
Aug. 11, 1891,	Ferdinand Paeschel,	NE. ¼ of SW. ¼,
Aug. 18, 1891,	Charles L. Forbes,	E. ½ of SW. ¼,
Aug. 27, 1891,	Thomas W. Alexander,	NW. ¼ NE. ¼ & NE. ¼ NW. ¼
June 29, 1891,	William H. Payne,	NW. ¼ of NE. ¼,
June 29, 1891,	William H. Payne,	NE, ¼ of NW. ¼,
Sept. 16, 1891,	Ursula Roeffler,	NE. ¼ of SW. ¼,
July 21, 1891,	H. Clarence Clark,	N. ½ of NW. ¼,
July 16, 1891,	George E. Smith,	NW. ¼ of NW. ¼,
July 8, 1891,	John F. Cox,	NE. ¼ of SE. ¼,
July 31, 1891,	Alexander P. Farrar,	NE. ¼ of NE. ¼,
Aug. 12, 1891,	Elvira McKee,	SW. ¼ of SE. ¼,
Aug. 12, 1891,	Albert M. Blaker,	W. ½ NE. ¼ & SE. ¼ NE. ¼,
Nov. 17, 1891,	Gustavus A. Pierce,	N. ½ of NW. ¼,
Aug. 13, 1891,	Lorenzo Fries,	S. ½ of SE. ¼,
Aug. 13, 1891,	Allen Fish,	N. ½ of NE. ¼,

Sec.	Tp.	Rg.	Acres.	Amt. of Purchase Price.	Amt. Paid to N. P. R. R. Co.	Amt. Paid to Receivers N. P. R. R. Co.	Date of Deed.
1	2	2	80.	$560.	$560.		Aug. 1, 1894
21	2	2	13.20	158.40	158.40		Nov. 6, 1891
23	2	2	80.	400.	160.	$240.00	July 25, 1896
23	2	2	40.	400.	80.	320.	Aug. 1, 1894
25	2	2	40.	400.	160.	240.	July 11, 1896
5	3	2	38.42	268.94	268.94		Aug. 27, 1891
5	4	2	76.03	304.12	304.12		Aug. 18, 1891
5	4	2	40.	180.	180.		Oct. 14, 1891
7	4	2	80.	400.	400.		Aug 13, 1891
9	4	2	2.50	10.	10.		Aug. 1, 1894
17	4	2	80.	208.	208.		Sept. 24, 1891
21	4	2	160.	416.	416.		Sept. 8, 1891
25	4	2	80.	208.	208.		Aug. 27, 1891
3	5	2	80.	400.	400.		Aug. 12, 1891,
5	5	2	162.07	421.40	421.40		Aug. 18, 1891
27	5	2	120.	312.	312.		July 15, 1891
27	5	2	40.	104.	104.		Nov. 17, 1891
27	5	2	40.	104.	104.		Aug. 11, 1891
31	5	2	80.	320.	320.		Aug. 29, 1891
35	5	2	80.	320.	32.	288.	April 18, 1895
33	2	3	40.	200.	80.	120.	July 6, 1896
33	2	3	40.	104.	104.		June 29, 1891
35	2	3	40.	160.	160.		Sept. 16, 1891
29	3	3	80.	400.	400.		Jan. 5, 1892
33	3	3	40.	280.	112.	168.	Aug. 1, 1894
33	3	3	40.	200.	200.		July 8, 1891
3	4	3	29.70	118.80	22.46	96.34	July 20, 1896
35	5	3	40.	200.	200.		Aug. 12, 1891
17	5	3	120.	312.	312.		Aug. 12, 1891
17	5	3	80.	208.	208.		Nov. 17, 1891
17	5	3	80.	208.	208.		Aug. 13, 1891
29	5	3	80.	208.	208.		Aug. 13, 1891

Oct. 27, 1891,	Jane Cahill,	S. ½ SW. ¼ & S. ½ of SE. ¼,
Sept. 8, 1891,	James S. P. Christy,	NE. ¼ of NW. ¼,
Oct. 14, 1891,	Robert J. Crawford,	S. ½ of NW. ¼,
Aug. 29, 1891,	Julia E. Brown,	SE. ¼ SW. ¼ & SW. ¼ SE. ¼,
Aug. 27, 1891,	Henry Henriksen,	SW. ¼ of NW. ¼,
June 22, 1891,	Hampton C. Blackwood,	W. ½ of NW. ¼,
Aug. 12, 1891,	Charles E. Holtgreive,	E. ½ of NE. ¼,
June 29, 1891,	James Meehan,	SE. ¼ of NW. ¼,
Dec. 31, 1891,	Frank F. Empaytaiz,	SW. ¼ of NE. ¼,
June 22, 1891,	James Russell,	Lot 8,
Aug. 12, 1891,	Fritz Kettler,	SE. ¼,
Aug. 11, 1891,	James Wilson,	W. ½ NE. ¼ & NW. ¼ SE. ¼,
Aug. 13, 1891,	Thomas Wilson,	E. ½ NW. ¼ & NE. ¼ SW. ¼,
Aug. 27, 1891,	Lasse T. Pedersen,	N. ½ of NW. ¼,
Mar. 22, 1892,	Lester M. Love,	SW. ¼ of SW. ¼,
Nov. 6, 1891,	Thomas Horn,	NE. ¼ of NE. ¼,
Aug. 10, 1875,	S. G. Reed,	All,
Oct. 22, 1891,	Peter Nelson,	NW. ¼ of SE. ¼,

Exhibit "B."

Date of Contract.	Names of Grantees.	Part of Section.
Aug. 13, 1891,	Thomas Rasmussen,	W. ½ of NE. ¼,
Aug. 27, 1891,	Lillie Farrier,	W. ½ of SW. ¼,
Nov. 17, 1891,	Herman Maetz,	W. ½ SE. ¼ & NE. ¼ SE. ¼,
Aug. 27, 1891,	George A. Whipple,	E. ½ SW. ¼ & SW. ¼ SE. ¼,
Aug. 27, 1891,	George A. Whipple,	W. ½ of SW. ¼,
Sept. 8, 1891,	Caroline Reichard,	NE. ¼ of NW. ¼,
Sept. 9, 1891,	Joseph Louis Kammenzine,	NW. ¼ of NW. ¼,
Sept. 8, 1891,	Calvrey E. Mackey,	SW. ¼ of SE. ¼,

29	5	3	160.	640.	640.		Oct. 27, 1891
31	5	3	40.	160.	160.		Sept. 8, 1891
17	2	4	80.	400.	40.	360.	Oct. 14, 1895
19	2	4	80.	320.	320.		April 14, 1892
21	2	4	40.	160.	160.		Aug. 27, 1891
29	2	4	80.	800.	800.		June 22, 1891
23	3	1	80.	560.	560.		Aug. 12, 1891
23	3	1	40.	104.	104.		June 29, 1891
3	5	1	40.	200.	200.		Dec. 31, 1891
11	5	1	31.20	81.12	81.12		June 22, 1891
13	5	1	160.	416.	416.		Aug. 12, 1891
23	5	1	120.	408.	408.		Aug. 11, 1891
23	5	1	120.	328.	328.		Aug. 13, 1891
27	5	1	80.	400.	400.		Aug. 27, 1891
27	5	1	40.	120.	120.		Mar. 22, 1892
33	5	1	40.	104.	104.		Nov. 6, 1891
23	8	1	640.	4160.	Amt. paid in bonds under first receivership.	4160.	Aug. 12, 1895
19	5	2	40.	280.	280.		Mar. 1, 1893
			4033.12		12,142.44	5992.34	
				18,134.78			

Sec.	Tp.	Rg.	Acres.	Amt. of Purchase Price.	Amt. Paid to N. P. R. R. Co.	Amt. to Receivers N. P. R. R. Co.	Amt. Paid to N. P. Ry. Co.	Date to Deed.
5	4	2	75.38	$376.90	$ 37.69	$ 75.38	$263.83	Jan. 2, 1897
9	4	2	80.	400.	80.	240.	80.	Sept. 4, 1896
27	5	2	120.	360.	72.	216.	72.	Nov. 27, 1896
19	2	3	120.	480.	96.	288.	96.	Nov. 23, 1896
19	2	3	67.28	1008.80	201.76	605.28	201.76	Nov. 23, 1896
33	5	3	40.	160.	32.		128.	June 14, 1897
3	5	1	38.38	191.90	77.97	69.85	44.08	Sept. 10, 1896
33	4	3	40.	200.	40.	120.	40.	Aug. 21, 1897
			581.04	31.7760	637.42	1614.51	925.67	

Exhibit "C."

Date of Contract.	Names of Grantees.	Part of Section
Sept. 8, 1891,	George Hardy,	SE. ¼ of SE. ¼,
July 31, 1891,	J. J. Smith,	NE. ¼ of SW. ¼,
Sept. 8, 1891,	Lewis J. Mosier,	NW. ¼, of SW. ¼,
Nov. 17, 1891,	J. J. Davey & Frederick Davey,	SE. ¼ of SE. ¼,
Sept. 8, 1891,	James R. McQueen,	SW. ¼ of NE. ¼,
Oct. 3, 1895,	August Sprick,	SE. ¼, of NE. ¼,
Mar. 24, 1896,	Robert Blair,	NE. ¼ of SE. ¼,
July 21, 1891,	Henry Groth,	SW. ¼ of SE. ¼,
Oct. 14, 1891,	John H. Beherns,	SE. ¼ of SE. ¼,
Aug. 27, 1891,	William T. Hodgkiss,	NE. ¼ of NE. ¼,
Sept. 4, 1891,	Charles M. Wiberg,	E. ½ of NW. ¼,
July 21, 1891,	Charles Peterson,	SE. ¼ of SW. ¼,
Aug. 27, 1891,	Washington I. Stoddard,	N. ½ of NW. ¼,
Sept. 24, 1891,	Paul Schultze,	NE. ¼ of SE. ¼,
Aug. 20, 1891,	John Asmus,	W. ½ of SE. ¼,
Aug. 20, 1891,	George W. Armstrong,	W. ½ of SW. ¼,
July 11, 1892,	Helena S. Green and Isaac W. Rowland,	N. ½ of NW. ¼,
Aug. 14, 1895,	Roswell R. Patch,	SE. ¼ of NW. ¼,
Oct. 8, 1891,	Cornelius D. Hinman,	SW. ¼ of SE. ¼,
Aug. 22, 1891,	Olif Shintaffer,	NE. ¼ of NE. ¼,
Sept. 4, 1891,	Terence Minogue,	SW. ¼ of SW. ¼,
Feb. 4, 1896,	John H. Hart,	NW. ¼ of NW. ¼,
Feb. 4, 1896,	William Osborn,	SW. ¼ of NW. ¼,
July 8, 1891,	Walter A. Price,	E. ½ NW. ¼ & SW. ¼ NW. ¼,
July 11, 1893,	Louis Kettler,	NW. ¼ of SW. ¼,
Aug. 13, 1891,	Richard Waldon,	S. ½ of SW. ¼,
Sept. 30, 1891,	John Gibson,	NE. ¼,
Oct. 31, 1891,	James Davis,	NW. ¼ of SW. ¼,
Aug. 13, 1891,	John K. Think,	SE. ¼ of NW. ¼,
Aug. 12, 1891,	John C. Gullette,	NE. ¼ of NW. ¼ and NW. ¼ of NW. ¼,

Sec.	Tp.	Rg.	Acres.	Amt. of Purchase Price.	Amt. Paid to N. P. R. R. Co.	Amt. Paid to Receivers N. P. R. R. Co.	Amt. Paid to N. P. Ry. Co.
1	3	1	40.	$200.00	$ 20.	$ 60.	$ 40.
1	2	2	40.	400.	160.	88.	
1	2	2	40.	400.	80.	80.	
23	2	2	40.	280.	56.	56.	
25	2	2	40.	400.	80.	158.65	
25	2	2	40.	400.		40.	
25	2	2	40.	240.		24.	
25	2	2	40.	400.	80.		
25	2	2	40.	400.	40.		
29	3	2	40.	520	104.	208.	
7	4	2	80.	400.	80.	78.11	14.11
7	4	2	40.	140.	76.98		
13	4	2	80.	320.	64.		
17	4	2	40.	160.	32.	32.04	
17	4	2	80.	320.	64.	64.	
19	4	2	75.28	376.40	150.56		
27	4	2	80.	400.	40.		
33	4	2	40.	320.		108.	53.80
3	5	2	40.	200.	40.	41.60	
13	5	2	40.	180.	36.	72.	
13	5	2	40.	160.	32.	55.77	
21	5	2	40.	174.		29.	
21	5	2	40.	174.		29.	
27	5	2	120.	480.	48.		
27	5	2	40.	400.	80.		
27	5	2	80.	320.	64.		
33	5	2	160.	920.	185.48	453.23	
33	5	2	40.	160.	16.		
35	5	2	40.	160.	16.	47.04	32.
3	1	3	76.48	382.40	76.48	32.55	

Sept. 16, 1891,	George Dreher,	N. ½ of NW. ¼,
Aug. 27, 1891,	Patrick Reilly,	N. ½ SE. ¼ & SE. ¼ SE. ¼,
Jan. 6, 1896,	Alfred Strunk,	NW. ¼ of SE. ¼,
Nov. 17, 1891,	Jermiah M. Crowson,	SE. ¼ of NE. ¼,
Aug. 27, 1891,	Martin H. Kendig,	NE. ¼ of NE. ¼,
Sept. 16, 1891,	Ursula Roffle,	SW. ¼ of NE. ¼,
Nov. 29, 1895,	Charles E. Shaw,	SW. ¼ of NW. ¼,
Nov. 29, 1895,	Frank Atwood,	SE. ¼ of NW. ¼,
Nov. 29, 1895,	Robert Shaw,	NE. ¼ of SW. ¼,
Nov. 29, 1895,	Charles E. Shaw,	NW. ¼ of SW. ¼,
Jan. 21, 1896,	Andrew Brown,	NE. ¼ of NE. ¼,
Sept. 8, 1891,	Carl Stutz,	N. ½ of NW. ¼,
Mar. 17, 1894,	Alex Mattson,	SW. ¼ of NW. ¼,
Aug. 27, 1891,	Henry Schroder,	S. ½ of NE. ¼,
Nov. 25, 1891,	John R. Bird,	W. ½ of SW. ¼,
Nov. 9, 1894,	George G. Wickson, Sr.,	SE. ¼ of SE. ¼,
Aug. 22, 1891,	Daniel Curtis,	SE. ¼ NE. ¼ & SW. ¼ NE.
Jan. 24, 1896,	Jessie Harrison,	NE. ¼ of NW. ¼,
July 31, 1891,	William Cahill,	E. ½ of SE. ¼,
Mar. 4, 1892,	William Cahill,	W. ½ of SE. ¼,
June 22, 1891,	Mary Cahill,	NE. ¼ of SE. ¼,
Sept. 24, 1891,	Elvira McKee,	SE. ¼ of SE. ¼,
Sept. 24, 1891,	Daniel Crowley,	NE. ¼ of SE. ¼,
Oct. 20, 1891,	Columbus L. Hutchinson,	NE. ¼ of SE. ¼,
Sept. 8, 1891,	Henry Hess,	W. ½ of SW. ¼,
Jan. 10, 1896,	Jorgen Henriksen,	NE. ¼ of SE. ¼,
	and Henrik Henriksen,	NW. ¼ of NW. ¼,
Nov. 25, 1891,	John F. Blackwood,	SE. ¼ of SE. ¼,
Aug. 27, 1891,	Christian Schlegel,	E. ½ of NW. ¼,
Jan. 30, 1892,	Samuel Berger,	NE. ¼ of SW. ¼,
Mar. 22, 1892,	John Loeffel,	SE. ¼ of SW. ¼,
Sept. 8, 1891,	Christian C. Anderson,	Lot 1,
June 22, 1891,	James S. Neill,	W. ½ of SW. ¼,

9	2	3	80.	320.	64.	64.	
13	2	3	120.	360.	72.	207.07	
19	2	3	40.	240.		40.	40.
25	2	3	40.	200.	152.	18.96	
31	2	3	40.	298.80	151.98		
35	2	3	40.	600.	60.		
5	3	3	40.	200.		20.	
5	3	3	40.	200.		20.	
5	3	3	40.	200.		20.	
5	3	3	40.	160.		16.	
19	3	3	40.	240.		40.	
27	3	3	80.	320.	64.	192.	
29	3	3	40.	400.		160.	80.
33	3	3	80.	400.	80.	240.	
35	3	3	80.	800.	80.		
29	4	3	40.	320.		64.	
31	4	3	80.	400.	80.	80.	
33	4	3	40.	160.		30.	
9	5	3	80.	400.	80.	240.	
9	5	3	80.	240.	48.	144.	
15	5	3	40.	400.	159.60	160.	
15	5	3	40.	200.	120.	60.	
17	5	3	40.	400.	40.	40.	
31	5	3	40.	160.	16.	48.	16.
17	2	4	80.	320.	32.	34.70	85.
19	2	4	40.				
21	2	4	40.	240.		40.	
19	2	4	40.	400.	80.	80.	
29	2	4	80.	320.	64.	192.	
29	2	4	40.	400.	40.		
29	2	4	40.	400.	40.		
31	2	4	31.98	319.80	63.96	191.88	
1	3	1	80.	480	192.	192.	

Dec. 8, 1891,	Peter Moore,	SE. ¼ of NW. ¼,
Oct. 17, 1895,	Michael Brown,	SW. ¼ of SE. ¼,
July 8, 1891,	William Tenney,	W. ½ of NE. ¼,
Nov. 9, 1894,	Mary E. Baker,	NE. ¼ of SW. ¼,
Aug. 7, 1893,	Charles Johnson,	NE. ¼ of SE. ¼,
Aug. 11, 1891,	Swan Johnson,	E. ½ of SW. ¼,
Nov. 20, 1891,	August Schuerman,	NE. ¼ of SW. ¼,
Aug. 20, 1891,	James Barr,	W. ½ of SW. ¼,
Aug. 27, 1891,	Carl Zuhl,	SE ¼ of SE. ¼,
Aug. 27, 1891,	Francis M. Greathouse,	SE. ¼,
Sept. 2, 1891,	Simon Johenson,	NE. ¼ of NE. ¼,
July 10, 1891,	H. C. Gabrielson,	W. ½ of SW. ¼,
Nov. 30, 1891,	H. C. Gabrielson,	SE. ¼ of SW. ¼,
July 27, 1891,	Henry J. Nixstad,	W. ½ of NW. ¼,
Oct. 14, 1891,	Olans S. Moe,	NE. ¼ of SW. ¼,
Feb. 8, 1895,	Mrs. Neila M. Olsen,	SE. ¼ of SW. ¼,
July 19, 1893,	William E. Young,	SW. ¼, NE. ¼ & NW. ¼ SE. ¼,
Sept. 4, 1891,	Charles M. Wiberg,	W. ½ of NW. ¼,
July 21, 1891,	Charles Peterson,	SW. ½ of SW. ¼,
Aug. 5, 1891,	Peter N. Moe,	S. ½ NW. ¼ & NE. ¼ SW. ¼,
Aug. 10, 1891,	Martin S. Moe,	NW. ¼ of SW. ¼,
Aug. 17, 1891,	Abraham Meister,	NE. ¼ of SE. ¼,
Aug. 18, 1891,	Johanna Holmberg,	Lots 3 and 4,
Jan. 29, 1896,	William M. Strunk,	SW. ¼ of NW. ¼,

11	3	1	40.	600.	120.		
11	3	1	40.	240.		120.	
23	3	1	80.	560.	112.	168.	
1	4	1	40.	320.		64.	
1	4	1	40.	400.	100.	75.	
13	5	1	80.	240.	48.	48.	
15	5	1	40.	320.	32.	64.	
15	5	1	80.	300.	30.	30.	
15	5	1	40.	120.	48.	41.41	3.36
21	5	1	160.	640.	128.	128.	
23	5	1	40.	120.	24.		
23	5	1	80.	240.	96.	48.	
23	5	1	40.	320.	32.	94.32	
25	5	1	80.	560.	224.		
25	5	1	40.	320.	32.	32.	
25	5	1	40.	320.		64.	
33	7	1	80.	260.	52.	55.09	105.79
7	4	2	75.11	375.55	75.11	73.35	13.26
7	4	2	37.68	131.88	82.53		
19	5	2	120.67	602.68	120.56		
19	5	2	41.01	287.07	113.76		
19	5	2	40.	160.	32.		
31	5	2	80.60	322.40	128.96		
19	2	3	33.76	202.56		33.76	33.76
			4932.57	28,247.54	5131.96	5521.53	517.08

[Endorsed]: Filed in the United States Circuit Court, October, 4, 1897. A. Reeves Ayres, Clerk. By Sam'l D. Bridges, Deputy.

And afterward, to wit, on the 14th day of December, 1898, there was duly filed in said court, in said cause, a replication in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Defendants. } No. 351.

Replication.

The replication of the United States of America, plaintiff, to the joint and several answers of the Northern Pacific Railroad Company and the Northern Pacific Railway Company to bill of complaint.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantages of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the said joint and several answer of the Northern Pa-

cific Railroad Company and the Northern Pacific Railway Company, and for replication thereunto, says: That it will aver, maintain and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that said joint and several answer of the Northern Pacific Railroad Company and Northern Pacific Railway Company is very uncertain, evasive, and insufficient in law to be replied unto by repliant without that, that any other matter or thing whatsoever, in the said joint and several answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill of complaint it hath already prayed.

WILSON R. GAY,
United States Attorney.

[Endorsed]: Filed in the United States Circuit Court, December 14, 1898, A. Reeves Ayres, Clerk. By Sam'l D. Bridges, Deputy.

And afterwards, to wit, on the 4th day of August, 1899, there was duly filed in said court, in said cause, a stipulation to amend, in the words and figures following, to wit:

Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY and NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.
No. 551.

Stipulation to Amend Answer.

It is hereby stipulated by and between the parties hereto, by their respective solicitors, that the answer of the defendants may be amended by adding at the end of the third paragraph thereof, the following

"That the several parcels of land so described in said schedules marked Exhibits "A," "B," and "C," and all thereof, were purchased by the respective persons named as purchasers in said exhibits for a valuable consideration and in good faith, as part of the grant to said Northern Pacific Railroad Company.

And that an order may be entered allowing said

amendment and the interlineation thereof in the original answer on file herein.

WILSON R. GAY,
United States Attorney,
Solicitor for Complainant.

JAMES B. KERR, and
H. M. STEPHENS,
Solicitors for Defendants.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. August 4, 1899. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

And afterwards, to wit, on the 4th day of August, 1899, there was duly filed in said court, in said cause, an order, in the words and figures following, to wit:

Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY al. NORTHERN PACIFIC RAILWAY COMPANY,
Defendants.
No. 551.

Order Allowing Amendment of Answer.

Upon stipulation of the parties duly filed herein, it is ordered that the answer of the defendants be amended by adding, by interlineation, at the end of the third paragraph thereof the following

"That the several parcels of land so described in said schedules marked Exhibits "A," "B," and "C," and all thereof, were purchased by the respective persons named as purchasers in said exhibits for a valuable consideration and in good faith, as part of the grant to said Northern Pacific Railroad Company.

Done in open Court this 4th day of August, 1899.

C. H. HANFORD,
Judge.

[Endorsed]: Filed in the United States Circuit Court, District of Washington, August 4, 1899. A. Reeves Ayres, Clerk. By A. N. Moore, Deputy.

And afterwards, to wit, on the 12th day of May, 1900, there was duly filed in said court, in said cause, a stipulation of laws and facts for trial, in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA, Complainant, vs. NORTHERN PACIFIC RAILROAD COMPANY and NORTHERN PACIFIC RAILWAY COMPANY, Defendants.	No. 551.

Stipulation of Laws and Facts for Trial.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that, for the

purposes of the trial of this action, the following facts shall be taken and deemed to be true:

I.

That at all the times hereinafter mentioned the Northern Pacific Railroad Company was a corporation, organized, created and existing under and by virtue of an act of Congress, approved July 2, 1864, entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific Coast, by the northern route."

That by the terms and provisions of said act, said corporation was authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as should be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget Sound, with a branch line via the Valley of the Columbia River, to a point at or near Portland, in the State of Oregon.

II.

That the third section of said act of Congress is in words and figures as follows, to wit:

Sec. 3. And be it further enacted, that there be, and hereby is, granted to the "Northern Pacific Railroad Company," its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy

transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the general land office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided, further, that the railroad company receiving the previous grant of land may assign their interest to said "Northern Pacific Railroad Company," or may consolidate, confederate and associate with

said company upon the terms named in the first section of this act: Provided, further, that all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd numbered sections, nearest to the line of said road may be selected as above provided: And provided, further, that the word "mineral," when it occurs in this act, shall not be held to include iron or coal: And provided, further, that no money shall be drawn from the treasury of the United States to aid in the construction of the said "Northern Pacific Railroad."

And by the fourth section of said Act of Congress, it was provided as follows:

Sec. 4. And be it further enacted, that whenever said "Northern Pacific Railroad Company" shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to, and coterminous with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been completed, constructed, and in readiness as aforesaid, and veri-

fied by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid: Provided, that not more than ten sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying East of the Western boundary of the State of Minnesota, until the whole of said railroad shall be finished and in good running order, as a first-class railroad, from the place of beginning on Lake Superior to the western boundary of Minnesota: Provided, also, that lands shall not be granted under the provisions of this act on account of any railroad, or part thereof, constructed at the date of the passage of this act.

And by the sixth section of said act, Congress provided as follows:

Sec. 6. And be it further enacted, that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An Act to secure homesteads to actual settlers on the "public domain," approved May, twenty, eighteen hundred and sixty-two, shall be, and the same

are hereby, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the government at a price less than two dollars and fifty cents per acre, when offered for sale.

And that the twelfth section of said Act of Congress was and is in words and figures as follows, to wit;

Sec. 12. And be it further enacted, that the acceptance of the terms, conditions, and impositions of this act by the said Northern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be served on the President of the United States. (13 Stat., 365)

And that the twentieth section of said Act of Congress was and is in words and figures as follows, to wit;

Sec. 20. And be it further enacted, that the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend, or repeal this act.

III.

That said railroad company accepted the terms, conditions and impositions of said Act of Congress in writing under its corporate seal, pursuant to the direction of its board of directors first had and obtained, and on the 29th day of December, A. D. 1864, served such acceptance on the President of the United States.

IV.

By joint resolution of April 10, 1869, it was resolved as follows;

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Pacific Railroad Company be, and hereby is, authorized to extend its branch line from a point at or near Portland, Oregon, to some suitable point on Puget Sound, to be determined by said company, and also to connect the same with its main line west of the Cascade mountains, in the Territory of Washington; said extension being subject to all the conditions and provisions, and said company in respect thereto being entitled to all the rights and privileges conferred by the act incorporating said company, and all acts additional to and amendatory thereof: Provided, that said company shall not be entitled to any subsidy in money, bonds, or additional lands of the United States, in respect to said extension of its branch line as aforesaid, except such lands as may be included in the right of way on the line of such extension as it may be located: And provided further, that at least twenty-five miles of said extension shall be constructed before the second day of

July, eighteen hundred and seventy-one, and forty miles per year thereafter until the whole of said extension shall be completed. (16 Stat. 57)

V.

That by the joint resolution of May 31, 1870, it was resolved as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgages on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation; and, as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound; and in the event of there not being any State or Territory in which said main line or branch may be located, at the time of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the

United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four. And that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, Anno Domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter, until the whole shall be completed between said points; Provided, that all lands hereby granted to said company which shall not be sold or disposed of or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road shall be subject to settlement and pre-emption like other lands, at a price to be paid to said company not exceeding two dollars and fifty cents per acre; and if the mortgage hereby authorized shall at any time be enforced by foreclosure or other legal proceeding, or the mortgaged lands hereby granted, or any of them, be sold by the trustees to whom such mortgage may be executed, either at its maturity or for any failure or default of said company under the terms hereof, such lands shall be sold at public sale, at places within the States and Territories in which they shall be situate, after not less than sixty days' pre-

vious notice, in single sections or subdivisions thereof, to the highest and best bidder: Provided, further, that in the construction of the said railroad, American iron and steel only shall be used, the same to be manufactured from American ores exclusively.

Sec. 2. And be it further resolved, that Congress may at any time alter or amend this joint resolution, having due regard to the rights of said company, and any other parties. (16 Stat. 379)

VI.

That the map or plat filed herewith and marked exhibit —— is a true and correct copy of a certain map or plat now in the office of the Commissioner of the General Land Office, which said map or plat was transmitted by Josiah Perham, the President of the Northern Pacific Railroad Company, to the Secretary of the Interior, on the 6th day of March, 1865, together with his letter of transmittal, which is in the words and figures following, to wit:

Washington, D. C., 6 March, 1865.

Hon. John P. Usher, Secretary of the Interior.

Sir: Under authority from the board of directors of the Northern Pacific Railroad Company, I have designated on the accompanying map, in red ink, the general line of their railroad from a point on Lake Superior, in the State of Wisconsin, to a point on Puget Sound, in Washington Territory, via the Columbia River, adopted by said company as their line of said railroad, subject only to such variations as may be found necessary after more specific surveys, and I respectfully ask that the same may be filed

in the office of the Commissioner of the General Land Office, together with a copy of the charter and organization of said company, and that under your directions the land granted to said company may be marked and withdrawn from sale, in conformity to law.

I am respectfully your obt. servant,

JOSIAH PERHAM,

President N. P. R. R. Company.

That thereupon the Secretary of the Interior transmitted the original of said map, a copy of which is filed herewith, made a part hereof and marked Exhibit ——, together with said letter of the said Josiah Perham, to the Commissioner of the General Land Office, on March 9, 1865, together with his letter of transmittal, which is in the words and figures following, to wit:

Department of the Interior,

Washington, D. C., March 9, 1865.

Sir: Herewith I transmit a map upon which the "general line" of the Northern Pacific Railroad, as adopted by the Board of Directors of that railroad company, is delineated; also a copy of the letter of the President of said company, dated the 6th inst., requesting that the granted lands along said line be withdrawn from market.

In view of the provisions of the 3d and 6th sections of the act of Congress, approved July 2, 1864 (pamphlet laws, pages 368, 369), should you perceive no objection, I think that the odd-numbered sections along the line, for ten miles in width on each side in Minnesota and Wisconsin and for twenty miles in width on each side along that part of the line extending through the territories west-

ward to Puget Sound, may be withdrawn as requested, as preliminary to the final survey and location of said railroad.

The even-numbered sections along the line will, however, be subject to disposal by the United States, as provided in the 6th section of said act of Congress.

Very respectfully your obt. ser't.,

J. P. USHER,

Secretary.

The Commissioner of the General Land Office.

VII.

That upon the receipt by the Commissioner of the General Land Office of the map mentioned in the foregoing paragraph of this stipulation, transmitted to the Secretary of the Interior by Josiah Perham, President of the Northern Pacific Railroad Company, on March 5th, 1865, a copy of which is marked Exhibit ——— of this stipulation said Commissioner, on the 22d day of June, 1865, transmitted a letter relative thereto to the Secretary of the Interior, which is in the words and figures following, to wit:

Department of the Interior,

General Land Office,

June 22d, 1865.

Hon. James Harlan, Secretary of the Interior:

Sir: The late secretary of the interior, under date of the 9th of March last, enclosed to this office a diagram showing the proposed route of the Northern Pacific Railroad, for which a grant of lands was made by the act

approved July 2d, 1864. Statutes at large pamphlet laws 1864, p. 365.

This diagram was filed in the secretary's office accompanied by a request for withdrawal of lands.

As no withdrawal was ordered by the secretary, no action was here taken upon the application.

Mr. Perham, the president of the railroad company, has called attention to the matter, and, submitting it, I have the honor to state:

1st. That the present application deals with the railroad system of granting on the largest scale known to Congressional legislation.

It extends from Lake Superior to the Pacific Ocean, and allowing for probable deflections, may be set down at 2,025 miles in length, taking in alternate sections by estimate 47,360,00 acres, in a belt of 40 miles wide through the territories and 20 miles wide through the states; the general or conjectural course being indicated on the map herewith.

By the opinions of Attorney General Cushing of 19th December, 1856, and 16th February, 1857—Opinions of Atty's General, Vol. 8, pages 244 and 390—and the action of the department, railroad grants take effect from the date when the survey of the route is actually made on the face of the earth.

The evidence required of the route under the established ruling of the department, is a connected map showing the exact location, the map indicating by flagstaffs the progress of the survey, the map to be authenticated by the affidavit of the engineer with the approval of the accredited chief officer of the grantee. That proof

is required to show the precise portions of each section or smallest legal subdivision cut by the route.

In the judgment of the Commissioner, no withdrawal should be ordered until such map is filed in the general land office, and although in the Atty. General's opinion —Mr. Cushing—the right takes hold from the date of actual survey on the ground, yet upon that point this office, with reference to superior legal authority, holds that the grant does not become effective until the map is actually filed in the district land office, where citizens resort to ascertain what is public land and what is not, so that purchases can be made without danger of conflicting title. Yet, even admitting that the right in the railroad grant attaches from the date of such survey, we are without the means of ascertaining and determining the interests of rightful claimants until such map is filed.

Now, in this view, the commissioner reports that no withdrawals should be ordered until the map of actual survey, authenticated as indicated, shall be filed in the district and general land offices.

This may be done starting from the cul de sac of Lake Superior, the eastern initial point of the route, and stretching thence westward to the western boundary of Minnesota, the lines of the public surveys having been that far established.

2d. The same course of proceeding to be had in regard to that portion of the road falling on the western or Pacific side within the range of existing public surveys but

3d. Of course no withdrawal can now be made on account of the road in the region of country extending across that part of the continent between the west bound-

ary of Minnesota to the eastern surveys of Washington Territory, because over that territory the lines of the public surveys have not yet been established.

In this extended locality the withdrawal should only be ordered as the public surveys are advanced and survey of railroad established in like manner as indicated under 1st head.

4th. A general withdrawal upon conjectural or uncertain basis might result in shutting out from settlement large bodies of land which an actual survey should show not within the grant, whilst lands would be omitted from the withdrawal which the survey might require to be included.

Then it is not sound policy nor is there any warrant in our land legislation for doing any act the tendency of which would give preference to satisfying a grant on such a stupendous scale as this, whilst individual claims under our general system of land laws, homestead, preemption and sales, would be unaided by any such preliminary discriminating proceeding.

The result of a premature withdrawal on uncertain basis would be unjust to the pioneer settler, detrimental to the public interests in arresting the progress of settlement and disposal in that direction of the public domain, and to that extent checking the growth and prosperity of our frontier, and that, too, in the vicinity of a colonial dependence of a powerful nation, would be a prejudice to the interests of the railroad grant itself in excluding settlers and immigrants whose labor and means would enhance the value of such lands as in the ordinary

progressive operations of the land system would in due time fall to the grant.

The land system should be so administered that all the different acts of land legislation may be at the same time in full operation—giving precedence to no one law over another, unless where the terms of law indicate the public will to be otherwise, leaving corporate or other grantees and individuals respectively to have the benefit of their superior diligence in establishing and completing their several claims according to law.

For these considerations this office declines ordering a withdrawal until authenticated maps of the actual survey of the several portions of the route shall be successively filed from time to time to completion showing the connection of said portions with the lines of the public surveys, yet respectfully submits the foregoing considerations for such directions as the secretary may be pleased to give in the premises for the government of this office.

With great respect, your ob't. ser't,

JOS. S. WILSON,
Actg. Commissioner.

That the following endorsements appear upon said letter in the words, figures and form, to wit:

Northern Pacific.
Dptmt of Interior.
R 77|377.
Com. Gen. Land Office.
June 22, 1865.
Rec'd June 23, 1865.
Submitting a diagram
Showing the proposed route
of the Northern Pacific
R. Road, &c.
Secy. sustains Comm's
refusal
Department
of the
June 23, 1865
Interior.
One 533
Thompson.

That all of said endorsements are written in ink except the words, "Sec'y sustains Comm's refusal," which said words are written in lead pencil; that the name of the Secretary of the Interior is not signed thereto, nor in any way does the name of said Secretary appear endorsed upon said letter.

VIII.

That the minutes of the Board of Directors of the Northern Pacific Railroad Company from December 7, 1864, which is the date of the first meeting of said Board

of Directors appearing in said minutes, up to the 18th day of May, 1865, do not show any action by said Board of Directors with reference to locating the line of the road of said Northern Pacific Railroad Company under said act of Congress of July 2, 1864, and said minutes do not show any action by said Board of Directors conferring special authority upon the President of said company to locate said line.

That said map marked Exhibit ——— of this stipulation has remained a part of the files of the Interior Department since the date of its filing, and the Northern Pacific Railroad Company never questioned the authenticity of said map, or the authority of its President to file the same in any proceeding before the Land Department of the United States, or in any court, prior to September 22, 1882, upon which date the map of definite location marked Exhibit ——— was filed, as set forth in these stipulations.

That in the year 1890 there was tried in the United States Circuit Court for the District of Oregon an action wherein the United States was plaintiff and the Northern Pacific Railroad Company defendant, brought for the recovery of the value of certain lumber manufactured from logs alleged to have been unlawfully cut and removed by the defendant from public lands; that in said case the Northern Pacific Railroad Company and the plaintiff therein stipulated and agreed, among other things, as follows:

On the 6th day of March, 1865, Josiah Perham, President of the Northern Pacific Railroad Company, ad-

dressed to the Secretary of the Interior a communication in these words:

Under authority from the Board of Directors of the Northern Pacific Railroad Company I have designated on the accompanying map in red ink the "general line" of their railroad from a point on Lake Superior, in the State of Wisconsin, to a point on Puget Sound, in Washington Territory, via the Columbia river, adopted by said company as the line of said railroad, subject only to such variations as may be found necessary after more specific surveys, and I respectfully ask that the same may be filed in the office of the Commissioner of the General Land Office together with a copy of the charter and organization of said company, and that under your directions the lands granted to said company may be marked and withdrawn from sale in conformity to law.

And upon the same, together wtih other statements of facts agreed and stipulated, said case was submitted. That said cause is reported in volume 41, Federal Reporter, page 842, and was afterwards appealed to the Supreme Court of the United States, and is reported in the 152 United States, page 284.

Other than as herein stipulated, the Department of the Interior has never taken any action under or relative to said map or made any withdrawals of land thereunder.

IX.

That the powers of the President of the said Northern Pacific Railroad Company, as conferred by the by-laws of the said company adopted January 11, 1865, are in the words and figures following, to wit:

THE PRESIDENT.

The President shall have power to call meetings of the Board of Directors at such time and place as he shall think proper to appoint, and it shall be his duty to call such meetings whenever requested so to do, in writing, by any three members of the board.

It shall be his duty to preside at all meetings of the board, to appoint all committees not otherwise appointed, to preserve order, promote the regular and speedy transaction of business, and generally to exercise the same supervisory power and direction over all the affairs, departments and employees of the company as are commonly exercised by the presiding officer of such companies.

He shall be a member ex-officio of all such standing and select committees.

All letters, reports and papers of every description received by the secretary or treasurer pertaining to the business of the company shall be submitted to the President, and all instructions emanating from those officers shall be first approved by him, except in cases directed and ratified by the board.

The President shall have the custody of all the official bonds of the company and keep them together as a special deposit subject to the orders of the board.

The President may also exercise such other powers and perform such other duties as the Board of Directors may from time to time confer or prescribe.

X.

That on July 30, 1870, the Northern Pacific Railroad

Co. caused to be filed in the office of the Secretary of the Interior two certain maps, copies of which are hereto attached, marked Exhibits ——— and ———, accompanied by the affidavit of the Chief Engineer of the Northern Pacific Railroad Company and the certificate of the President of that company, being in words and figures as follows, to wit:

State of New York,
County of New York. } ss.

New York City, July 26, 1870.

Edwin F. Johnson, of the City, County, and State of New York, deposes and says that he is the Engineer in Chief of the Northern Pacific Railroad Company, and that he has been such engineer in chief since June, A. D. 1866.

That during the period above named surveys and explorations have been made at various places on the proposed route for said road for determining its proper location, and that in connection with said surveys examinations have been made and information has been collected relative to other portions of said route, sufficient to enable the said company to determine approximately and by reference to appropriate landmarks the proper position for the line of their said road on those portions with a view to the withdrawal from market or from settlement of the lands granted to the said company on either side of their said road.

The portions of the line of the Northern Pacific Railroad, the proper location of which have thus been ascertained, extend the first portion from Lake Superior in the State of Wisconsin to the Columbia River in the Territory

of Washington, a distance, as estimated, of fifteen hundred and ten miles (1510).

This portion is more particularly described as follows, viz:

Commencing in the State of Wisconsin at the mouth of the Montreal river the western boundary of upper Michigan;

Thence on a direct course south of west to the northwest corner of township forty-six (46), range four (4) west, in said Wisconsin, a distance of about twenty-five miles;

Thence in a direct course north of west to a point in the west line of township forty-eight (48) range sixteen (16) west, in Minnesota one and one-half miles south of the northwest corner of said township a distance of about sixty-eight (68) miles;

Thence on a direct and nearly west course through Carlton, Cass, Wadena and Ottertail counties to the northwest corner of township one hundred and thirty-six (136), range thirty-eight (38) west, a distance of about one hundred and fifty miles;

Thence northwestwardly on a direct course through Ottertail, Becker, Clay and Polk counties to a point on the east or right bank of the Red river in the middle line of township one hundred and forty-two (142), range forty-eight (48) west, a distance of about sixty-nine miles;

Thence northwestwardly across the said river into the Territory of Dakota on a direct course to Fort Totten on Lake Miniwaken or Devil's Lake in said Dakota a distance of about one hundred and twenty miles;

Thence in a direction a little to the south or west on a direct line to the isolated butte or mound known as the

Maison du chien in said Dakota, a distance of about ninety miles;

Thence southwestwardly on a direct course across the Missouri River to a point on the west or left bank of the Yellowstone river in Montana situated fifty-two miles in a direct line southerly from Fort Union on the Missouri River, a distance of about one hundred and seventy-nine miles;

Thence southwestwardly on a direct course to a point on the west or left bank of the Bighorn river opposite to the mouth of Tullocks or Muddy creek about seven miles from the Yellowstone River, an estimated distance of one hundred and sixty-six miles;

Thence on a direct course southwestardly to the mouth of Clark's fork a branch of the Yellowstone river in said Montana, a distance of about seventy-four miles;

Thence following up the valley of the Yellowstone river on its south side and parallel nearly with its general course to a point on its east or right bank opposite the mouth of Shields or Twenty-five mile river, a distance of about ninety-five miles;

Thence up the Yellowstone river on its right of east bank, crossing it and entering a valley leading from it to the pass known as Boseman's pass on nearly a direct course to Fort Ellis, a distance of about twenty-two miles. Thence on a direct course westwardly across the Gallatin and Madison rivers to the mouth of Boulder creek of the Jefferson branch of the Missouri river a distance of about forty miles. Thence following up the valley of the Jefferson river southwestwardly and parallel nearly with the general course of said river to the mouth of the Wis-

dom river, a distance as estimated of sixty miles. Thence due west across the main divide of the Missouri and Columbia waters on a direct course to the mouth of the Beaver creek, a branch of the Salmon river near the great bend of the latter in the Territory of Idaho, a distance as estimated of ninety miles. Thence following down the Salmon river in said Idaho, keeping near to it, to a point on its north bank twenty miles from its mouth, a distance as estimated of one hundred and thirty miles. Thence in a northwestwardly direction on a direct course to a point on the east or right bank of the Lewis or Saptin river ten miles north of the point where the boundary line of Washington Territory and Oregon meets that river, a distance as estimated of fifty miles.

Thence on a direct course a little to the south of west crossing the Lewis or Saptin river into Washington Territory to a point on the right or northwesterly bank of the Columbia River opposite to the mouth of the Walla Walla River, a distance as estimated of ninety miles;

Making altogether on this portion a distance of fifteen hundred and ten miles, more or less, from the point of commencement on Lake Superior in Wisconsin to the Columbia River at the mouth of the Walla Walla River in Washington Territory.

Another portion of the line of the Northern Pacific Railroad, the proper location of which has been ascertained as above is situated in Washington Territory, and extends from the international boundary of forty-nine degrees of north latitude southerly along the easterly side of Puget Sound or of the chain of inland tide waters connected with the strait of Juan de Fuca to their south-

ern extremity, thence southerly to the Columbia River and along the eastern and northerly or right bank of that river to a point opposite to the mouth of the Walla Walla River in said Territory.

This portion is more particularly described as follows, viz:

Commencing at the point where said international boundary of forty-nine degrees of north latitude first meets in its course west the tidewaters of the Pacific Ocean;

Thence southwestwardly by the most direct course to the town of Whatcom on Bellingham Bay in said Territory, a distance of about twenty miles;

Thence southeastwardly on a direct course to the middle point of township number thirty-seven (37), range three (3) east of the Willamette meridian a distance of about six miles;

Thence southeastwardly on a direct course to the middle point of township No. thirty (30) range five (5) east of the Willamette meridian a distance of about forty-four miles;

Thence southwestwardly on a direct course to the middle point of township twenty-seven (27), range four (4) east of the Willamette meridian a distance of about twenty miles;

Thence due south on a direct course to the middle point of township twenty-one (21); range four (4) east of the Willamette meridian a distance of thirty-six miles;

Thence southwestwardly on a direct course to the southwest corner of township seventeen (17) range two (2)

west of the Willamette meridian a distance of about forty-two miles;

Thence on a direct course a little east of south to the middle point of the west line of township seven (7), range one (1) west of the Willamette meridian on or near the east or right bank of the Columbia River, a distance of about fifty-two miles;

Thence following the east or right bank of said river on or near the line of high-water mark of the same southerly to the site of Fort Vancouver, and thence across said river to Portland, Oregon, and back to Vancouver, a distance of about thirty-three miles to Portland;

Thence from Fort Vancouver following the right or northerly bank of the said Columbia River on or near the line of high-water mark of the same eastwardly through the Cascade Range of Highlands to a point opposite the mouth of the Walla Walla River a distance of one hundred and ninety miles more or less; making an estimated distance altogether on this portion of the route of four hundred and forty-three miles, and for the aggregate of the two portions as described above, a distance of nineteen hundred and fifty-three miles, more or less.

These two portions of the Northern Pacific Railroad above described are fully exhibited on the two maps respectively hereto appended and signed by the undersigned of even date with this certificate.

EDWIN F. JOHNSTONE,
Eng. in Chf N. Pacific R. R. Compy.

Sworn and subscribed to this twenty-sixth day of July, A. D. 1870.

Before me

[Seal]

W. N. GODDARD,
Notary Public, Co. of N. Y.

It is hereby certified that in pursuance of the Act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound on the Pacific Coast by the Northern Rroute," and the several acts amendatory thereto, certain portions of the line or route for said road were so far definitely fixed by resolution of the Board of Directors of said company on the eighth day of July, A. D. 1870, as to make it the duty of the President of the said company to request the Honorable the Secretary of the Interior to withdraw or withhold from sale and settlement the public lands to which said company are entitled on either side of the lines of their road so described as aforesaid in the certificate of their engineer in chief.

They therefore respectfully ask that their interests may be protected so far as they can be by a withdrawal of lands as above set forth.

Such protection it is believed is in strict accordance with the intentions of Congress in granting lands to the company for the construction of their road, and will save the company from serious loss or diminution in the value of the grant consequent upon the delay necessary in making the surveys for filing a location in the usual form.

In testimony whereof the Northern Pacific Railroad

Company has caused the same to be signed by its President, and has attached hereunto its corporate seal at the city of New York this twenty-sixth day of July, A. D. 1870.

J. GREGORY SMITH,
President Nor. Pacific R. R. Co.

[Seal] SAM'L WILKESON,
Secretary.

That thereafter, to wit, on the 13th day of August, 1870, the Secretary of the Interior transmitted the same maps to the Commissioner of the General Land Office, together with a letter in words and figures as follows, to wit:

Department of the Interior.
Washington, D. C., August 13, 1870.

Sir: I transmit herewith two maps showing the designated route of the Northern Pacific Railroad.

You will immediately direct the proper local land officers in the States of Wisconsin and Minnesota to withhold from sale, pre-emption, homestead and other disposal the odd-numbered sections not sold, reserved, and to which prior rights have not attached, within 20 miles on each side of the route, and in like manner direct those officers in Washington Territory to withhold such odd-numbered sections as lie south of the town of Steilacoom. The unsurveyed as well as surveyed lands will be included in the reservation, and you will direct the local officers to give notice accordingly; and as the township plats are received by them, they will make the proper note of reservation thereon.

The withdrawal will take effect from the receipt of the order at the local office.

Very respectfully your obedient servant,

J. D. COX,

Secretary.

Hon. JOS. S. WILSON,

Commissioner of the General Land Office.

XI.

That said Northern Pacific Railroad Company caused to be surveyed the line of definite location of that portion of its line of railroad and telegraph line extending from Kalama to Tenino, in the then Territory of Washington, and on the 13th day of Setember, 1873, caused a plat thereof, approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office; that a copy of said map is hereunto annexed, marked Exhibit ——, and made a part hereof.

That upon the filing of said map the Commissioner of the General Land Office, acting under the direction of the Secretary of the Interior, caused to be prepared a diagram showing the lands situate within the 40 and 50 mile limits on each side and coterminous with said line of definite location, and, on the 21st day of January, 1874, transmitted said diagram to the United States District Land Officers at Vancouver, Washington, together with a letter in words and figures as follows, to wit:

Department of the Interior.

General Land Office.

Washington, D. C., January 21st, 1874.

Register and Receiver, Vancouver, W. T.

Gentlemen: I transmit herewith a diagram showing the

40 and 50 mile limits of the land grant to the Northern Pacific Railroad Company in your district, as now definitely fixed, and you are hereby directed to withhold from sale or entry all of the odd-numbered sections falling within those limits, not heretofore withdrawn upon the general route of the road, the limits of which are shown on the diagram in green.

The even sections within the 40 mile limits are to be held at the double minimum price of $2.50 per acre, but the even sections between the 40 and 50 mile limits at $1.25 per acre only.

This additional withdrawal of odd sections, and the increase in price of the even sections, takes effect from September 13th, 1873, the date of the filing of the map of definite location in this office by the company.

Be pleased to acknowledge the date of the receipt of this letter.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

That a copy of said diagram so prepared by the Commissioner of the General Land Office and so transmitted to said District Land Officers, is hereunto annexed, marked Exhibit ——, and made a part hereof.

XII.

That thereafter the said Northern Pacific Railroad Company caused to be surveyed the line of definite location of that portion of its line of railroad and telegraph line extending from Kalama, in the then Territory of Washington, to Portland, in the then State of Oregon, and

on the 22d day of September, 1882, caused a plat thereof, approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office; that a copy of said map is hereunto annexed, marked Exhibit ——, and made a part hereof.

That upon the filing of said map the Commissioner of the General Land Office, acting under the direction of the Secretary of the Interior, caused to be prepared a diagram showing the lands situate within the 20 and 30 mile limits on each side and coterminous with said line of definite location, and on the 30th day of January, 1888, transmitted said diagram to the United States District Land Officers at Vancouver, Washington, together with a letter in words and figures as follows, to wit:

Department of the Interior,
General Land Office.
Washington, D. C., January 30, 1888.

Register and Receiver, Vancouver, Washington Territory.

Gentlemen: This office is in receipt of your letter of the 14th instant, and in answer thereto I have to advise you that the map of the definite location of the line of the Northern Pacific Railroad from Portland, Oregon, to Kalama, Washington Territory, was filed in this office September 22, 1882. I enclose you herewith a diagram showing the limits of the grant to said company as adjusted to the line of definite location so far as the lands fall within your district.

The lands are in no way affected by the filing of this diagram, the same having been withdrawn in 1870 upon the line of general route along the Columbia River.

A diagram showing the limits of the grant from Kalama northward in your district, as adjusted to the line of definite location, was sent to your office January 21, 1874.

Please acknowledge receipt of the enclosed diagram.

Very respectfully,

S. M. STOCKLAGER,

Acting Commissioner.

That a copy of said diagram, and a letter in words and figures the same as said letter so transmitted to said District Land Officers at Vancouver, were in like manner transmitted to the United States District Land Officers at Olympia, Washington.

That a copy of said diagram so prepared by the Commissioner of the General Land Office and so transmitted to said District Land Officers at Vancouver, is hereunto annexed, marked Exhibit ——, and made a part hereof.

XIII.

That by act of Congress approved September 29, 1890, entitled "An act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes," it was provided by section 1 of said act:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed, and in operation, for the construction

or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain: Provided, that this act shall not be construed as forfeiting the right of way or station grounds of any railroad company heretofore granted. (26 Stat., 496.)

It was further provided by section 6 of said act as *follows:*

Sec. 6. That no lands declared forfeited to the United States by this act shall by reason of such forfeiture inure to the benefit of any State or corporation to which lands may have been granted by Congress, except as herein otherwise provided; nor shall this act be construed to enlarge the area of land originally covered by any such grant, or to confer any right upon any State, corporation, or person to lands which were excepted from such grant. Nor shall the moiety of the lands granted to any railroad company on account of a main and branch line appertaining to uncompleted road, and hereby forfeited, within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure by virtue of the forfeiture hereby declared, to the benefit of the completed line. (26 Stat., 496, 498.)

XIV.

That following the passage of the said act of September 29, 1890, the Secretary of the Interior, on December 24, 1890 (11 L. D. 625), issued the following instructions under the said act:

By letter of October 28, 1890, you submitted for my approval a draft of a circular letter of instructions under the forfeiture act of September 29, 1890. (26 Stat., 496.)

Section 1 declares a general forfeiture of granted lands

opposite to the unconstructed portions of land-grant railroads.

Section 2 of said act provides:

"That all persons who, at the date of the passage of this act, are actual settlers in good faith on any of the lands hereby forfeited and are otherwise qualified, on making due claim on said lands under the homestead law within six months after the passage of this act, shall be entitled to a preference right to enter the same under the provisions of the homestead law and this act, and shall be regarded as such actual settlers from the date of actual settlement or occupation; and any person who has not heretofore had the benefit of the homestead or pre-emption law, or who has failed from any cause to perfect the title to a tract of land heretofore entered by him under either of said laws, may make a second homestead entry under the provisions of this act."

You state that a strict construction of this language would exclude from the privilege of a second homestead entry granted by this section, any person who had perfected title to land under either the homestead or pre-emption law, and would confer the privilege only upon those who had made an entry under either law, and failed from any cause to perfect title to the same, but that this construction is repugnant to the idea of a second homestead entry, "for unless the settler had heretofore made a homestead entry, the necessity for the privilege of a second homestead entry does not arise." You then express the belief that "the intention of this act is to permit a second entry where the party has not heretofore

perfected title under both homestead and pre-emption laws, thus to permit him to acquire, in the aggregate, three hundred and twenty acres under both of said laws."

It is clear that the first clause of the section allows the actual settler, if qualified, to make a homestead entry of the tract upon which he had made settlement, and this as a preference right to be exercised within six months after the passage of the act. While the language of the second clause is somewhat ambiguous, I have concluded that the language authorizing "a second homestead entry" refers only to those persons who had theretofore made a homestead entry but failed from any cause to perfect the same. The object is to allow any one qualified who had not theretofore secured a piece of land under the homestead law to obtain a tract of these forfeited lands under that law, and at the same time to take these lands out of the operation of the pre-emption law.

I suggest that the circular instructions under the third section of the act be in the words of the act itself, with the addition of the instructions now in the circular as to the provisos to said section.

By the first section of the act the grant to the Northern Pacific Railroad Company appertaining to the main line between Wallula, Washington, and Portland, Oregon, is forfeited.

This renders it necessary to establish terminals separating the granted lands from those forfeited, at these points.

On August 13, 1885, the question of fixing the terminal limit at Wallula was considered by the Department (5 L. D., 459), and it was held that the line should be run

at right angles to the general course of the last section (of twenty-five miles) of the road.

By the fourth section of the grant for said company it is enacted:

"That whenever said Northern Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed, in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States; and patents of land as aforesaid shall be issued to said company, confirming to said company the right and title of said lands, situate opposite and coterminous with said completed section of said road. . . . . And so, from time to time, whenever twenty-five additional consecutive miles shall have been constructed. (13 Stats., 369.)"

Referring to these provisions the Secretary in his decision of 1885 said:

"From these provisions as the railroad company completed each consecutive twenty-five miles of road, upon report of the commissioners, the grant must be confirmed by patents for the land on each side of the road corresponding with the section of the road completed. If it is to be confirmed by patent, as each twenty-five miles is constructed, a determination of boundary must precede the patent, the presumption would arise that

either at or before the time the inspection was made, the law contemplated that the terminal limit of the twenty-five miles inspected was to be fixed. By the provisions of the grant, such inspection would fix the terminal limit of land to be patented and thus, for purposes of patenting, the road as constructed, would be divided in patenting sections of twenty-five miles each, the boundary of each of such sections fixed at or before the time of inspection.

"The grant then having divided the road into sections of twenty-five miles for purposes of boundary and patenting, in fixing the boundary of this last section by the provisions of the grant alone (excluding all extraneous facts), as the courses of the road are various, some general course must be adopted from which to fix the terminal line.

"The subject of the course to be fixed was considered in a decision rendered by Secretary Thompson, on the 23d of February, 1858, reported in first lester, page 527, also in the case of the Flint and Pere Marquette Railroad, by Secretary Kirkwood, on September 1, 1881 (1 L. D. 394); and also was incidentally discussed by the Supreme Court of the United States in the case of the United States vs. Burlington and Missouri River Railroad (8 Otto, 334). The substance of the rulings in the several cases is: 'The land is taken along such line in the sense of the statute, when taken along the general direction or course of the said road within lines perpendicular to it at each end.'

"Then if this rule is to be applied (as it has been already shown, only the last twenty-five miles of the road

under the terms of the present grant can be considered), the terminal line should be run at right angles to the general course of the last twenty-five miles of the road."

Under this decision it is clear that the Department held the company to be entitled to patents for the road then constructed, down to the line so established and no further. Assuming this conclusion to be correct (and the forfeiture act in no way interferes with it), there is no reason now presented for changing the same. On the contrary the terms of the forfeiture act are in line with that decision. Said section four of the granting act, supra, directed patents to issue for lands "opposite to and co-terminous with said completed section of said road; . . . . and so on as fast as every twenty-five miles of said road is completed as aforesaid": the first section of the forfeiture act restores to the United States the title to "all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed." If the line fixed in 1885 separated the lands then earned by the company, by the construction of the road, from those not so earned, it does so now, as no more road has since been built. In other words that line divides the lands "opposite to and coterminous with" the portion not constructed, from those earned by the constructed road. The line of 1885, will, therefore, be adhered to.

The same principles apply to the line at Portland.

Section 6 of the act provides:

"Nor shall the moiety of the lands granted to any railroad company on account of a main and a branch line

appertaining to uncompleted road, and hereby forfeited, within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure by virtue of the forfeiture hereby declared to the benefit of the completed line."

You state that "the grant appertaining to the main line of the Northern Pacific Railroad, forfeited by this act, is overlapped by the limits adjusted upon the constructed branch line of said road, and as to such overlap the grant is of a moiety on account of each line"; that the map of general route of the main line opposite said conflict was filed and a legislative withdrawal made thereon prior to the location of the branch line and that the withdrawal continued in force at the date of the passage of the forfeiture act. You conclude that within the conflict "every alternate odd-numbered section" should be reserved for the branch line, and the remaining odd sections restored to the public domain under said section 6, and suggest that the company be called upon to elect which of such alternate odd-numbered sections it will take in satisfaction of the moiety for its branch line. All of this meets with my approval.

The company urges that as the main line had not been definitely located, between Wallula and Portland, the lands within the withdrawal on general route for that distance cannot be treated as granted lands, and are therefore not subject to said provisions as to moiety lands within the overlapping limits.

This contention cannot be sustained. In the first place there was a grant along said route, which lacked only action on the part of the company to consummate.

Furthermore, a reading of the entire act leaves no room to doubt that a forfeiture along said stretch of the main line was contemplated, and the lands so forfeited are described in the first section of the act as "granted" lands. If this be not true, there has been no forfeiture at all on that part of the line, a conclusion which even the company does not maintain. It is equally apparent that the word "granted" in said section 6, is used in the same sense as in section one, and, therefore, refers to the lands upon which the forfeiture operates. These are the lands withdrawn along said line.

You will, accordingly, notify the company to indicate within thirty days from notice what alternate odd-numbered sections it will elect to take. If the company elect to take sections 1, 5, 9, 13, etc., of the various townships then sections 3, 7, 11, 15, etc., will remain to the Government and be restored to the public domain or vice versa. Should the company fail to make its election within said time then your office will act in that capacity in its stead.

Section 7 provides that upon certain conditions the forfeiture shall not operate for one year as to so much of the grant for the Gulf and Ship Island Railroad as lies south of a line drawn east and west through the point where said road may cross the New Orleans and Northeastern Railroad in the State of Mississippi. It appears from inquiries made by your office that the former road will not cross the latter at the point indicated by the map of definite location. You accordingly request instructions "as to where the terminal shall be established in order to separate the lands upon which

the act operates immediately from those saved from forfeiture for one year." I suggest that you direct said company to notify you, within thirty days, of the exact point at which the line will cross the New Orleans road.

After the submission of said circular, by letter of November 7, 1890, you submitted an opinion in reference to the operation of section 8 of said act upon the grant for the Mobile and Girard Railroad in Alabama. Inasmuch as the questions therein involved are peculiar, I suggest that the instructions under said section be omitted from the circular and I will communicate with you later on the subject.

You state that section 4 of the act repeals certain sections in acts making grants to aid in the construction of certain railroads in so far as said sections require the Secretary of the Interior to reserve lands within the indemnity limits of such grants, and recommend the formal restoration of any such lands now remaining withdrawn.

On August 13, and 15, 1887, the lands within indemnity limits of most of the land grant, roads were restored to the public domain (6 L. D. 84 and 92). Certain exceptions, however, were made of roads to which you now refer. (See 6 L. D. 328 and 456.) To the end suggested by you, you will notify each of said companies to show cause within thirty days why the withdrawal of indemnity lands made for its benefit, should not now be revoked and the lands therein embraced restored to settlement. This practice is in accord with that in the former restoration.

Otherwise than as herein indicated the proposed circular will meet my approval. Herewith are returned the papers.

XV.

That thereafter, in further construing the said forfeiture Act of Congress of September 29, 1890, the Secretary of the Interior, on July 18, 1895, in the case of John T. Spaulding vs. Northern Pacific Railroad Company (21 L. D. 57), involving land similarly situated to these here in controversy, rendered the following decision:

I have considered the appeal by John T. Spaulding from your office decision of May 21, 1892, denying his application to purchase under the third section of the act of September 29, 1890 (26 Stat. 496), the E½ of the NE. ¼ and N. ½ of SE. ¼ Sec. 5, T. 4 N., R. 2 E., Vancouver land district, Washington.

The act of September 29, 1890, supra, forfeited the lands opposite and coterminous with the unconstructed portion of any railroad to aid in the construction of which a grant had previously been made, and the basis of appellant's claim is that this land was forbidden by that act, and was therefore, subject to his application under the third section.

Your office decision holds that the lands falling within the primary limits of the grant upon the definite location shown upon the map filed September 22, 1882, are not affected by the act of forfeiture and Spaulding's application is therefore denied.

This land is in the neighborhood of Portland, Oregon, and would be east of a terminal line drawn at right an-

gles to the last twenty-five miles of road, as shown upon the map of general route east of Portland. It is also within the primary limits of the grant appertaining to the road, as located and constructed north of Portland or between Portland and Tacoma.

In the case of the United States vs. Northern Pacific Railroad Company (152 U. S. 284), the Court holds that the grant for the portion of the road between Portland and Puget Sound was made by the joint resolution of May 31, 1870 (16 Stat. 378), and that the company did not take by relation as of the act of July 2, 1864, (13 Stat. 365), for this portion of its road.

Under the act of July 2, 1864, a grant was made to the Northern Pacific Railroad Company for a road via the valley of the Columbia River to a point at or near Portland, so that it must be clear that in the neighborhood of Portland the company has two grants: that via the valley of Columbia River east of Portland, being under the act of July 2, 1864, and the grant north of Portland to Puget Sound, being under the resolution of May 31, 1870.

Prior to the passage of the resolution of 1870, no location had ever been made of the grant under the act of 1864, so that when filing its map of general route on August 13, 1870, a continuous line was shown via the valley of the Columbia River extending northward to Puget Sound. The limits adjusted thereon were continuous limits and upon the maps of location of that portion of the road extending north of Portland, which was constructed, the limits were adjusted without regard to any conflict with the grant east of Portland. The line

of road east of Portland via the valley of the Columbia River, was not constructed past Wallula, Washington, so that the portion of the road between Wallula and Portland, being unconstructed, the grant appertaining thereto was forfeited by the act of September 29, 1890, supra.

It appears that following the passage of the act of September 29, 1890, to wit, on October 28, 1890, your office submitted for approval a draft of a circular letter of instructions under that act and therein the question as to the proper terminal separating the forfeited lands from those not forfeited at Wallula and Portland, was submitted for consideration.

This matter was considered in departmental letter of December 24, 1890 (11 L. D. 625), in which it was held, after referring to departmental decision of August 13, 1885 (5 L. D. 459), that—

"Under this decision it is clear that the Department held the company to be entitled to patents for the road then constructed, down to the line so established, and no further. Assuming this conclusion to be correct (and the forfeiture act in no way interferes with it) there is no reason now presented for changing the same. On the contrary the terms of the forfeiture act are in line with that decision. Said section four of the granting act, supra, directed patents to issue for lands 'opposite to and coterminous with said completed section of said road; . . . . and so on as fast as every twenty-five miles of said road is completed as aforesaid'; the first section of the forfeiture act restores to the United States the

title to 'all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of any such railroad not now completed.' If the line fixed in 1885 separated the lands then earned by the company, by the construction of the road, from those not so earned, it does so now, as no more road has since been built. In other words the line divides the lands 'opposite to and coterminous with' the portion not constructed, from those earned by the constructed road. The line of 1885, will, therefore, be adhered to. The same principles apply to the line at Portland."

This has since been considered as the decision of this Department, and all lands within the limits of the grant adjusted to the line of location of the road north of Portland, have been held to have been saved from forfeiture and not subject to the provisions of the act of September 29, 1890.

The case in hand, however, for the first time presents this question for determination by the Department, and the instructions previously given cannot be considered as an adjudication of the question. From what has been said it must be clear that there are two grants, under which this company claims, in the neighborhood of Portland; that east of Portland being under the act of 1864, while that running north of Portland is under the resolution of 1870. The grant for that portion of the road in the neighborhood, and east of, Portland, was forfeited by the act of September 29, 1890. As provided in the act of forfeiture, none of the lands forfeited inure by reason of such forfeiture to any other grant. So far,

therefore, as the limits of the grant for the portion of the road via the valley of Columbia River and east of Portland, overlaps the subsequent grant for the portion of the road north of Portland, the latter grant must, to that extent, fail, and it must be held that such lands are subject to the operation of the act of September 29, 1890.

In the departmental decision of August 13, 1885 (referred to in the instructions of December 24, 1890), the terminal under consideration was one occurring in the adjustment of the limits to a portion of the road in process of construction, the grant for which was made by the act of July 2, 1864, and it was therein correctly held that the terminal established upon the constructed road properly separated the lands earned from those forfeited, so far as that grant was concerned.

The question presented at Portland, however, was not similar to that discussed in the decision of August 13, 1885. Portland was the end of one grant and the beginning of another; these two approached each other at nearly right angles, so that, of necessity, the two grants in the neighborhood of Portland overlapped. The prior grant having been forfeited, the lands appertaining thereto were restored to the public domain, and the establishment of the terminal upon the construction of the road from Portland northward, could in no wise be considered as a terminal for separating the lands forfeited from those not forfeited, upon the other line for which another grant, of a different date, was claimed by the company.

The instructions of December 24, 1890, are hereby recalled and vacated in so far as they hold that the ter-

minal established upon the constructed road north of Portland correctly separates the lands in that vicinity (which were earned by the construction of the road aforesaid) from the land forfeited and appertaining to the road east of Portland. In the adjustment of this grant, therefore, it must be held, as before stated, that all lands within the limits of the grant adjusted to the line east of Portland, are forfeited and restored by the act of September 29, 1890, without regard to the limits of the adjustment upon the road north of Portland.

As your office decision denied Spaulding's application upon the ground that the same fell within the limits adjusted to the located road north of Portland, I must reverse your office decision and said application will be accepted, unless, upon further examination, other good and sufficient reasons appear for the rejection of the same.

XVI.

That thereafter in pursuance of the foregoing decisions the Department of the Interior caused to be prepared a diagram showing the terminal line to the portion of the grant via the valley of the Columbia River to a point at or near Portland as defined by said decisions, and said diagram was by the Commissioner of the General Land Office transmitted to the local United States officers at Vancouver, Washington, with a letter from the Commissioner of the General Land Office dated January 26th, 1896, in words and figures as follows, to wit:

Department of the Interior,
General Land Office,
Washington, D. C., January 22, 1896.

Register and Receiver, Vancouver, Washington.

Sirs: I enclose herewith instructions, approved by the Secretary of the Interior, January 13, 1896, for the restoration to entry of the lands within your district, which are affected by the ruling of the Department of July 18, 1895, in the case of Spaulding vs. Northern Pacific R. R. Co. (21 L. D. 57), affirmed on review October 18, 1895, wherein it was held that there are two grants to the Northern Pacific Railroad Company, the first by the act of July 2, 1864, and the second by the joint resolution of May 31, 1870, in the neighborhood of Portland, Oregon, and that so far as the limits of the grant of 1864 overlapped the subsequent grant of 1870, the latter must fail; that the forfeiture by the act of September 29, 1890, of the former, included the land within the overlap, and that they are subject to disposal thereunder.

Said instructions are accompanied by a diagram showing within the colored lines marked "20 miles limit, act of 1870"; "40 miles limit act of 1870"; "40 miles limit, act of 1864"; and "Western terminal of forfeiture act of September 29, 1890," the area affected by the Spaulding decision.

You will without delay take the steps indicated therein for opening the lands to disposal, and report promptly your action in the matter.

Very respectfully,
S. W. LAMOREUX,
Commissioner.

That a copy of said diagram so transmitted to the district officers at Vancouver is hereunto attached and marked Exhibit ——— and made a part hereof.

XVII.

That thereafter, upon consideration of a certain petition filed on behalf of settlers praying for a change in the terminal as aforesaid defined to the unconstructed portion of the Northern Pacific Railroad via the valley of the Columbia River to a point at or near Portland, the Secretary of the Interior, on July 9, 1896, (23 L. D. 71), rendered an opinion in words and figures as follows, to wit:

With your office letter of March 26, 1896, was transmitted a petition filed on behalf of certain settlers praying for a change in the terminal established to the unconstructed portion of the Northern Pacific Railroad via the valley of the Columbia River, to a point at or near Portland.

To a proper understanding of the question a brief recitation of the legislation and previous action taken by this department in relation to the grant is necessary.

The act of July 2, 1864, (13 Stat. 365), incorporating the Northern Pacific R. R. Co. made a grant to aid in the construction of a continuous line of railroad—

"Beginning at a point on Lake Superior, in the State of Minnesota or Wisconsin, thence westerly by the most eligible route, as shall be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude, to some point on Puget Sound, with a branch via the valley of the Colum-

bia River, to a point at or near Portland, in the State of Oregon, leaving the main trunk line at the most suitable place, not more than three hundred miles from its western terminus.

By the joint resolution of April 10, 1869 (16 Stat., 57), said company was "authorized to extend its branch line from a point at or near Portland, Oregon, to some suitable point on Puget Sound, to be determined by said company, and also to connect the same with its main line west of the Cascade Moutains in the Territory of Washington."

By the joint resolution of May 31, 1870 (16 Stat. 378), said company was authorized—

"To locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound via the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound."

In the case of Spaulding v. Northern Pacific R. R. Co. (21 L. D., 57), it was held that—

"At Portland, Oregon, the Northern Pacific has two grants, the first for the line eastward, under the act of 1864, and the second northward under the joint resolution of 1870, and so far as the limits of the grant east of said city overlaps the subsequent grant, the latter must fail; and as the road at such point eastward is unconstructed and the grant therefor forfeited by the act of September 29, 1890, the lands so released from said grant, do not inure to the later grant, but are subject to

disposal under the provisions of said forfeiture act. (Syllabus.)"

After this decision it became necessary to establish a terminal separating the grants in the neighborhood of Portland, and the diagram submitted showed the location of the terminal to be at a point selected on the line of general route to the north of the Columbia River, which point your office denominated as Vancouver, Washington.

The petition urges that the point selected is about two miles east of the actual location of Vancouver, and in reporting on said petition your office letter states:

"In submitting this matter, I have to say that the diagram prepared by this office nearly twenty-six years ago, to show the limits of the withdrawal which took effect upon the filing by the railroad company of the map of the general route of its road from Puget Sound, by way of the valley of the Columbia River, to the mouth of the Walla Walla River, was prepared from said map, and the line of the road on the diagram corresponds with that on the map of location as nearly as it is possible to make it, the roughness and crudity of said map being considered.

"The claim that Vancouver is two miles west of the place fixed on the diagram, if true, is not material, the spot on the line of the road fixed as the most westerly point nearest to Portland being taken as the end of the location under the act of 1864, and the diagram showing Vancouver at that point it was so stated in the letters treating of the matter. It was the most westerly point on the line of the located road nearest Portland that was

sought and fixed upon, and it matters not whether this point is at Vancouver or elsewhere. The line of the road where it touches Vancouver according to the copy of the township filed and marked exhibit B, is not such point. The location map of the company and the map of the State prepared by this office both show Vancouver east of its actual location, but as before stated, this is not material.

"An examination of the map of location shows that line of the road as a continued line along the north bank of the Columbia, with a spur to Portland, from a point near Vancouver and east thereof, which as before stated is practically the same as fixed in the preparation of the diagram of the grant.

"No reference is made to the spur to Portland either on the map itself or the letter transmitting it to this office, nor has mention of it been made until now, in any manner. It is not shown on the withdrawal diagram, and no attention was paid to it in the construction of said diagram. No withdrawal on account of it was ever made, although the first withdrawal on account of this portion of the road was of twenty miles only and did not cover all lands within twenty miles of the spur.

"To sum up the facts in relation to this matter, the line of the road was laid down on the diagram of withdrawal as nearly as possible in conformity with that shown on the map of location, this diagram has governed the action of this office in the administration of the company's grant for nearly twenty-six years, and ever since the earliest action affecting said grant was taken; the point fixed for the western terminal of the forfeiture is

the most westerly point on the located line of the road, nearest Portland, Oregon, for which any withdrawal was made, and said terminal as shown is as nearly correct as it is possible to get it."

From the previous recitation it is apparent that Congress first provided for a main line to Puget Sound with a branch via the valley of the Columbia River, to a point at or near Portland.

Under the resolution of 1869, said company was authorized to extend its branch line from a point at or near Portland to Puget Sound, but without a land grant.

The joint resolution of 1870, changed the branch to main line, the company being authorized "to locate . . . . its main road to some point on Puget Sound via the valley of the Columbia River," etc.

This same resolution provides—

"And that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by January 1, 1872, and forty miles of the remaining portion thereof each year thereafter until the whole shall be completed between said points."

In referring to this resolution, the Supreme Court in the case of United States vs. Northern Pacific R. R. Co. (152 U. S. 294), said:

"Undoubtedly, this resolution gave authority to locate and construct a main road via the Columbia River Valley to Puget Sound. A road so located and constructed would, or might, have passed the city of Portland. But if, as the company now insists, the act of 1864 gave ample authority to locate and construct a road extending

from Lake Superior to Puget Sound, along the valley of the Columbia River, and by the way of Portland or its vicinity, the resolution of 1870 was entirely unnecessary in so far as it gave authority to the company to locate and construct its road through the Columbia River Valley to some point on Puget Sound. We cannot agree that this resolution is to be held, in this respect, as simply a recognition by Congress of an existing right, in the company, to locate and construct a road from Portland to Puget Sound, with the right to obtain lands, in aid thereof, as provided in the act of 1864. On the contrary, it should be regarded as giving a subsidy of lands in aid of the construction of a new road, not before contemplated, that would directly connect Portland and its vicinity with Puget Sound."

This would seem to make it clear that the point of connection between the branch line originally provided for, which was to end at a point "at or near Portland," and the extension to Puget Sound, which under the resolution of 1870 became a continuous line was, by the joint resolution of 1870, made at Portland, Oregon, instead of "at or near Portland." The map filed in 1870 shows a continuous line to the north of the Columbia River with a line dropped from a point nearly due north of Portland to Portland, a distance of about seven miles.

In the building of the road from the western terminus at Tacoma the company built directly to the city of Portland.

It will thus be seen that the resolution of 1870 designated the city of Portland, the company's map of location made connection with that city and in the building

of the road southward from Tacoma, the company built direct to Portland, so that had the company proceeded with the construction under its charter it would necessarily have been obliged to built eastward from Portland.

In this connection I have to call attention to the fact that in considering the question of the conflict between the grant made by the act of 1864 for the Northern Pacific R. R. Company, and the Oregon and California R. R. Co., under the act of July 25, 1866 (14 Stat., 239), Portland was accepted as the western terminus of the branch line of the Northern Pacific railroad provided for under the act of 1864, at which point the terminal was drawn. Upon the basis of this terminal suit has been begun against the Oregon and California railroad company, in which judgment below has been given against the company.

For the reasons given I am of opinion that the terminal to the portion of the line via the valley of the Columbia River should be drawn through Portland, Oregon, thus forming a continuation of the terminal heretofore established at that point.

Under date of May 20, 1896, you transmitted the papers relative to a demand made upon the Northern Pacific Railroad Company for the reconveyance of certain lands erroneously patented to the east of the terminal heretofore established by your office, from which it appears that the resident counsel for the company, Messrs. Britton and Gray, have refused to accede to the demand.

These papers are returned to the end that the demand

may be amended to agree with the change in the terminal herein directed to be made.

XVIII.

That thereafter the Commissioner of the General Land Office prepared a diagram showing the designation of the terminal line contemplated by the decision of the Secretary of the Interior, set out in the preceding paragraph of this stipulation, and transmitted said diagram to the local officers at Vancouver, Washington, on August 20, 1896, with a letter in words and figures as follows, to wit:

Department of the Interior,

General Land Office,

Washington, D. C., August 20, 1896.

Register and Receiver, Vancouver, Wash.

Sirs: On January 13, 1896, instructions were given your office for the restoration of the lands within your district which were affected by the ruling of the Department of July 18, 1895, in the case of Spaulding vs. Northern Pacific R. R. Co. (21 L. D. 57), where it was held that there are two grants to the Northern Pacific Railroad Company, the first by the act of July 2, 1864, and the second by the joint resolution of May 31, 1870, in the neighborhood of Portland, Oregon, and that so far as the limits of the grant of 1864 overlapped the subsequent grant of 1870 the latter must fail; that the forfeiture of the act of September 29, 1890, of the former included the lands within the overlap, and that they are subject to disposal thereunder.

On July 9, 1896, the Department amended the ruling

in Spaulding vs. N. P. R. R. Co., supra, by directing that the western terminal to the forfeited portion of the company's line via Columbia River be drawn through Portland, Oregon, thus forming a continuation of the terminal heretofore established at that point showing the conflict between the grant by the act of 1864 to the Northern Pacific Company and the Oregon and California Railroad Company by the act of July 25, 1866.

It is the duty of this office therefore to dispose of the additional lands coming within the overlap under said Spaulding ruling as amended. I have accordingly prepared and herewith enclose a diagram showing within the colored lines marked "Western terminal of forfeiture act of September 29, 1890," and "Final Western terminal of forfeiture act of September 29, 1890," the additional area affected by the said ruling as amended.

To the end that all persons interested may have opportunity to present any claims they may have to any of these additional lands, you will cause to be published for a period of thirty days, in some newspaper of general circulation in their vicinity, a notice that said lands were declared forfeited by the act of September 29, 1890, and restored to the public domain, and are subject to disposal by your office, and that in order to protect their rights all claimants under said forfeiture act of 1890, and the act of March 1, 1887, should come forward and assert their claims.

The receiver, as disbursing officer, will pay the cost of

publication and forward a copy of the notice, with proof of publication as his voucher for disbursement.

Very respectfully,

S. W. LAMOREUX,
Commissioner.

Approved:
HOKE SMITH,
Secretary.

That a copy of said map or diagram so prepared by the Commissioner of the General Land Office and transmitted to the District Land Officers at Vancouver, is hereunto annexed, marked Exhibit ———, and made a part hereof.

XIX.

That a portion of the lands described in the bill of complaint herein are situated opposite to and coterminous with the line of definite location of that portion of said Northern Pacific Railroad extending from Kalama to Tenino, in the Territory (now State) of Washington, and within the prescribed limits of the grant of lands in place.

That the remaining lands described in said bill of complaint herein are situated opposite to and coterminous with the line of definite location of that portion of said Northern Pacific Railroad extending from Kalama, in the Territory (now State) of Washington, to Portland, in the State of Oregon, and are within the prescribed limits of the grant of lands in place.

That all of the lands described in the bill of complaint are situate opposite to and within forty miles of that portion of the lines delineated upon said maps of 1865

and 1870 extending down the valley of the Columbia River to a point at or near Portland in the State of Oregon; and all of said lands are likewise situate opposite to and within forty miles of that portion of the lines delineated upon said maps extending northward from a point at or near Portland to Puget Sound.

XX.

That all of the lands described in the bill of complaint herein were, on May 31, 1870, as well as on the dates of the filing of the maps of definite location by said Northern Pacific Railroad Company opposite thereto, to wit, on September 15, 1873, and September 22, 1882, public lands to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, except so far as said lands were reserved or appropriated by reason of the grant made by the act of July 2, 1864, to aid in the construction of that portion of said Northern Pacific Railroad via the valley of the Columbia River to a point at or near Portland, and the maps filed and acts of the company performed in pursuance thereof.

XXI.

That prior to the year 1875, the Northern Pacific Railroad Company completed the construction of that portion of its road extending from Kalama to Tacoma, upon the line of definite location thereof; and thereupon the President of the United States appointed commissioners to examine that portion of said road, and said commissioners duly reported that the same had been constructed in a good, substantial and workmanlike manner, in all

respects as required by the act making the grant; and thereupon, to wit, on the first day of January, 1875, the President of the United States approved the report of said commissioners and accepted said portion of said road, as required by the act making the grant.

That thereafter said Northern Pacific Railroad Company completed the construction of that portion of said road extending from Kalama, in the then Territory of Washington, to the city of Portland, in the State of Oregon; that said portion of said road was constructed upon said line of definite location; and thereupon the President of the United States appointed commissioners to examine said portion of said road, and said commissioners duly reported that the same had been constructed in a good, substantial and workmanlike manner, in all respects, as required by the act making the grant; and thereupon, and on October 5, 1883, the President of the United States duly approved the report of said commissioners and accepted said portion of said road, as required by the act making the grant.

XXII.

That no portion of the said Northern Pacific Railroad and telegraph line via the valley of the Columbia river to a point at or near Portland, has ever been constructed by the said Northern Pacific Railroad Company.

XXIII.

That on or about the 23d and 27th days of May, 1895, the United States issued and delivered to the Northern Pacific Railroad Company letters patent, in due form of law, conveying to said Northern Pacific Railroad Com-

pany the legal title to all the lands described in the bill of complaint and involved in this suit.

XXIV.

That the Northern Pacific Railway Company is a corporation organized, created and existing under and by virtue of the laws of the State of Wisconsin.

XXV.

That the decree of the Circuit Court of the United State for the Eastern District of Wisconsin, and of the Circuit Court of the United States for the District of Washington, alleged in the bill and admitted in the answer thereto, was rendered in a suit of equity, instituted by the Farmer's Loan and Trust Company, for the purpose of foreclosing three certain mortgages, executed and delivered by the said Northern Pacific Railroad Company, upon certain property of said company, including the lands described in the bill of complaint, under said decree, and by virtue of certain deeds of conveyance, executed in pursuance of said decree, the Northern Pacific Railway Company acquired all the interest of the Northern Pacific Railroad Company in and to those lands described in the bill of complaint, which, at the date of said sale, were undisposed of by said Northern Pacific Railroad Company, by virtue of sales, contracts and deeds as hereinafter set forth.

XXVI.

That the allegations contained in paragraph three of the answer herein, as amended, relating to the sale of

the lands described in schedules "A," "B," and "C," annexed to said answer, are true.

JOHN W. GRIGGS,
Attorney General of the United States.

WILSON R. GAY,
United States Attorney, Solicitors for Complainant.

JAMES B. KERR,
H. M. STEPHENS,
Solicitors for Defendants.

Rescinded as to Par. 26, by stipulation filed Dec. 20, 1900.

J. B. K.
W. R. GAY.

O. K.
GAY,
U. S. Att'y.
KERR,
For Defendants.

[Endorsed]: Filed in the United States Circuit Court. May 12, 1900. A. Reeves Ayres, Clerk. By Sam'l D. Bridges, Deputy.

And afterwards, to wit, on the 20th day of December, 1900, there was duly filed in said court in said cause a replication, in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Defendants. } No. 551.

Replication.

The replication of the United States of America, plaintiff, to the joint and several answer of the Northern Pacific Railroad Company and the Northern Pacific Railway Company to bill of complaint.

This repliant, saving and reserving to itself now and at all times hereafter all and all manner of benefits and advantages of exception, which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the said joint and several answer of the Northern Pacific Railroad Company and the Northern Pacific Railway Company, and for replication thereunto, says: That it will aver, maintain, and prove its said bill of complaint

to be true, certain, and sufficient in the law to be answered unto; and that said joint and several answer of the Northern Pacific Railroad Company and Northern Pacific Railway Company is very uncertain, evasive and insufficient in law to be replied unto by repliant without that, that any other matter or thing whatsoever, in the said joint and several answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill of complaint it hath already prayed.

WILSON R. GAY,
United States Attorney.

Received copy hereof, Dec. 19, 1900.

JAMES B. KERR,
for Defendants.

Due and full service of within replication acknowledged this 19th day of December, 1900.

As to time of service and filing waived.

JAMES B. KERR,
Attorney for Defendants.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. Dec. 20, 1900. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 20th day of December, 1900, there was duly filed in said court in said cause a stipulation, in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

IN EQUITY.

UNITED STATES OF AMERICA, Complainant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY and NORTHERN PACIFIC RAILWAY COMPANY, Defendants. } No. 551.

Stipulation as to Laws and Facts.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that that portion of a certain stipulation of facts filed herein on the 12th day of May, in the year 1900, namely, paragraph twenty-six of said stipulation which reads as follows: "That the allegations contained in paragraph three of the answer herein as amended relative to the sale of lands described in Schedules "A," "B," and "C" and annexed to the answer are true," be, and the same is hereby rescinded and held for naught.

It is further stipulated that for the purposes of the

trial of this cause that the following facts shall be taken to be true:

That some of the persons named in the schedules attached to the answer herein, purchased those certain lands, the descriptions whereof are set opposite their respective names, from the Northern Pacific Railroad Company, or the receivers thereof, for a valuable consideration and in the belief that said lands were part of the grant to said railroad company, and that some other of said persons named in said schedules entered into contracts with said railroad company, or its receivers, for the purchase of those lands, descriptions whereof are set opposite their respective names, but at the same time insisted that said lands were excepted from said grant and certain of said persons last named had made, at the said time said contracts were entered into and prior thereto, applications to enter said lands under the homestead law which were still pending at the date of the execution of said several contracts, and it is agreed that if a decree shall be directed herein awarding relief to the complainant, a reference shall be ordered for the purpose of determining what patents, if any, covering said lands, if any, should be confirmed under the provisions of that act of Congress approved March 3, 1887, entitled, "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes," and that act of Congress approved March 2, 1896, entitled, "An act to provide for the extension of the time within which suits may be brought to vacate and annul land patents, and for other purposes," and

upon such reference the status of said purchasers and the lands held by them shall be ascertained under the directions of the Court and report thereof made to the Court.

January 20, 1900.

JOHN W. GRIGGS,
Attorney General.
By W. R. GAY,
United States Attorney.
WILSON R. GAY,
Counsel for Complainant.
JAMES B. KERR,
Counsel for Defendants.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. December 20, 1900. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 20th day of December, 1900, there was duly filed in said court in said cause an order, in the words and figures following, to wit:

In the United States Circuit Court, for the District of Washington, Western Division.

UNITED STATES OF AMERICA, Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY et al., Defendants.

No. 551.

Order Allowing Replication.

In the above cause, plaintiff this day files replication to defendants' answer, as amended, with the full acknowledgment of service by counsel for defendants and a waiver as to time, and this Court being fully advised, does direct that the said replication may be deemed as filed within the time prescribed by the rules of this Court, on the hearing.

Done in open Court this 20th day of December, 1900.

C. H. HANFORD,
Judge.

O. K.
J. B. K.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. December 20, 1900. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 18th day of July, 1901, there was duly filed in said court in said cause a memorandum of decision, in the words and figures following, to wit:

In the Circuit Court of the United States, District of Washington, Western Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants.

Memorandum of Decision on the Merits.

(Filed July ——, 1901.)

This suit was instituted by the Attorney General to cancel patents for a large number of tracts of land within odd numbered sections on both sides of that part of the Northern Pacific Railroad which extends from Tacoma to Portland, and it has been argued and submitted upon the pleadings and an agreed statement of facts. Construction of this section of the Northern Pacific Railroad was authorized, and a grant of lands to aid the same was given by the joint resolution of Congress passed May 31, 1870. The original charter of the Northern Pacific Railroad Company contained in the act of Congress of July 2, 1864, authorized the construction of a branch line of the Northern Pacific Railroad through the valley

of the Columbia River to Portland, Oregon, and granted lands to aid in the construction thereof. The line of road from Tacoma to Portland as constructed, is nearly at right angles with the contemplated line down the Columbia River to Portland, so that the land grant contained in the joint resolution of May 31, 1870, overlaps that part of the grant contained in the original charter situated within the square bounded by the two lines leading into Portland, and the eastern boundary line of the grant made by the joint resolution and the northern boundary line of the grant for the branch line via the Columbia River valley. The branch line was not constructed west of Wallula, and by an act of Congress all of the grant appertaining to the uncompleted part of the road was forfeited to the United States. The lands involved in this suit, were patented to the railroad company as part of the grant earned by the construction and completion of the road into Portland from Puget Sound and the present contention of the Government is that, said lands were forfeited because within the boundaries of the grant which would have been earned by completion of the road from Wallula to Portland. In the argument, counsel for the Government have rested their case upon the theory that these lands were so disposed of by the first grant to the Northern Pacific Railroad Company that the Government could not thereafter make another grant of the same lands to the same grantee, therefore, these lands were not granted by the joint resolution, and as they were not earned by compliance with the conditions prescribed in the original charter, they

necessarily reverted to the United States by virtue of the forfeiture act.

The Supreme Court has by a line of decisions, construed the acts granting lands to our transcontinental railroads so that there is now no room for controversy, as to the time when the grant becomes attached to the particular lands which a railroad company may lawfully claim by virtue of its grant. The grant, although a grant *in praesenti*, is afloat and unattached to any particular lands until the line becomes definitely located by the filing of a map thereof in the General Land Office. The line of the Northern Pacific Railroad, from Wallula down the Columbia River to Portland, was never definitely located, therefore under the settled construction of the grant no lands contiguous to that line passed out of the possession or control of the Government. (U. S. vs. N. P. Ry. Co., 152 U. S. 284-300; U. S. vs. Oregon & Cal. Rd. Co., 176 U. S. 28-51.) In the case last cited the Supreme Court plainly decided that the grant to aid in the construction of the Northern Pacific Railroad down the Columbia River valley to Portland, did not at once transfer the title to the odd numbered sections within the exterior boundaries of the grant, but, as in the case of other grants, the lands remained free and subject to disposition to other grantees of the Government until such time in the future as the Northern Pacific Railroad Company should acquire a vested right to the particular lands, by definitely locating its line and filing a map thereof as prescribed by its charter. It has been said in the argument, that the natural topography of the country along the Columbia River between Wallula and Portland is

such that the railroad company could not locate a line for a railroad in any way so as to exclude the lands involved in this law suit from the boundaries of its grant, but that circumstance furnishes no basis whatever for construing the Northern Pacific charter differently from the way in which it has been construed heretofore. Congress might have given attention to the explorations and surveys which had been made for the Northern Pacific Railroad, and might have located the line of the road definitely, and fixed precisely the boundaries of the land grant, but the Court is not to presume that Congress did intend to definitely locate that part of the railroad, or to relieve the railroad company from the exaction of filing a map locating the line definitely, because by the decisions it is settled that Congress did not intend to do so.

Neither does the fact that the two grants which overlap each other in this case were made to the same grantee afford any ground for distinguishing this case from the case of U. S. vs. Oregon & Cal. Railroad Company. By the final determination of the Supreme Court in that case it is settled that the Government did have the right, notwithstanding the grant made to the Northern Pacific Railroad Company, by the act of July 2, 1864, to make another grant of lands within the same boundaries.

There is nothing to distinguish this case from the O. & C. R. Co. case, except the fact that, in this case both grants are to the same grantee. The difference is not of consequence. The first grant did not exhaust the power of the Government with respect to the lands in suit, neither was the capacity of the N. P. R. Co. to receive,

exhausted. The two grants may be regarded as separate contracts between the same parties, the United States Government in effect proposed to the Northern Pacific Railroad Company, to make a grant of these lands and other lands as part of the consideration for the construction of a road from Wallula to Portland, and afterwards proposed to make a grant of the same lands and other lands in consideration of an extension of the road to connect its two western termini; the railroad company was not required to construct both sections in order to perfect its right to these particular lands, but it was authorized to earn all the lands involved in this suit by constructing either one of the two distinct sections of the road, by completing both sections, other lands within the limits prescribed by the original grant, would have been earned, but no additional lands could be claimed on account of the overlap, because the grants are not of quantity, but only entitle the grantee to claim whatever lands fall within the limits defined.

It is my opinion that no reason has been shown for impeaching the validity of the patents, therefore, a decree will be entered that the United States take nothing, and that this suit be dismissed.

C. H. HANFORD,

Judge.

[Endorsed]: Filed in the United States Circuit Court, July 18, 1901. A. Reeves Ayres, Clerk. By Sam'l. D. Bridges, Deputy.

And afterwards, to wit, on the 2d day of August, 1901, there was duly filed in said court in said cause a decree, in the words and figures following, to wit:

Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants.

No. 551.

Decree.

The above-entitled cause coming on to be heard, and having been submitted to the Court upon the pleadings therein and upon an agreed statement of facts signed by the solicitors of the respective parties, and on file herein; and said cause having been argued by counsel, and the Court being advised, it is, on motion of counsel for defendants—

Ordered, adjudged, and decreed that the bill of complaint of the complainant herein be and it is hereby dismissed for want of equity.

By the Court.

Dated, August 1, 1901.

C. H. HANFORD,
Judge.

[Endorsed]: Filed in the United States Circuit Court. August 2, 1901. A. Reeves Ayres, Clerk. By Sam'l D. Bridges, Deputy.

And afterwards, to wit, on the 30th day of January, 1902, there was duly filed in said court in said cause exceptions, in the words and figures following, to wit:

In the United States Circuit Court, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), et al.,
Defendants.
No. 551.

Exceptions to Decree.

Comes now Edward E. Cushman, Assistant United States Attorney, and excepts to that certain order, judgment and decree made and signed herein on the 1st day of August, 1901, and filed and entered herein on the 2d day of August, 1901, and to each and every part thereof, for and upon the ground that it is against the law and unsupported by the evidence, and pleadings, and further, asks that these, his exceptions, be allowed nunc pro tunc as of the 1st day of August, 1901.

EDWARD E. CUSHMAN,
Assistant United States Attorney.

Said exceptions are allowed nunc pro tunc as of the 1st day of August, 1901.

C. H. HANFORD,
Judge.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. January 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 30th day of January, 1902, there was duly filed in said court in said cause an assignment of errors, in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant and Appellant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.
No. 551.

Assignment of Errors.

Comes now, on this 30th day of January, 1902, the above-named plaintiff and appellant, by Edward E. Cushman, its attorney and solicitor, and Assistant United States Attorney for the District of Washington, and for its assignment of errors herein says:

That in the record and proceedings in the above-entitled cause upon the hearing and determination thereof in the above-entitled Court, and in the decision, order, judgment and decree signed and made herein by the said Court in said cause under date and on the 1st day of August, 1901, and entered and filed herein on the 2d day of August, 1901, there is manifest error in this, to wit:

I.

The Court erred in making the order, judgment and decree above described.

II.

The Court erred in finding and deciding therein that there was want of equity in the bill of complaint of the complainant and appellant herein, and in dismissing the same.

III.

The Court erred in holding that the complainant and appellant herein was not the owner of the lands described in the bill of complaint and all of them.

IV.

The Court erred in holding that the defendant, the Northern Pacific Railroad Company, had earned said lands described in the bill of complaint or any of them by the construction of its road from Portland to Tacoma and that the defendant, the Northern Pacific Railway Company and the grantees of said company and those of the defendant, Northern Pacific Railroad Company, were the owners of said lands or any of them.

V.

The Court erred in holding that the grant to the Northern Pacific Railroad Company under the act of July 2d, 1864, and the filing by it of its map of route in the office of the Commissioner of the General Land Office on August 13th, 1870, did not except and withdraw the lands described in the bill of complaint and all of them from any lands granted or intended to be granted by the United States to said railroad company by the joint resolution of May 31st, 1870, or other acts of Congress.

VI.

The Court erred in holding that the United States by the joint resolution of May 31st, 1870, granted to and intended to grant to the Northern Pacific Railroad Company the lands described therein and that such grant attached upon the filing in the office of the Commissioner of the General Land Office by the said company of its map of definite route from Kalama to Tenino on the 13th day of September, 1873.

VII.

That the Court erred in holding that the United States by the joint resolution of May 31st, 1870, granted and intended to grant to the Northern Pacific Railroad Company the lands described in the bill of complaint or any part hereof and that such grant attached upon the filing in the office of the Commissioner of the General Land Office by said company of its map of definite route from Kalama to Portland on the 22d day of September, 1882.

VIII.

That the Court erred in holding that by the act of September 29th, 1890, a forfeiture to the Government was not effected of the lands described in the bill of complaint and of all of them and further erred in holding that by that act said land would not be restored to the public domain.

It is not intended by the specifications of error numbered three to eight, inclusive, to thereby limit other errors and errors on the part of the Court included in that certain judgment, order and decree described and referred to in the assignments of error numbered one and two.

Wherefore, the above-named plaintiff and appellant prays that these his assignments of error be entered upon the record in this cause, and further prays that upon the hearing of this appeal that the order, judgment and decree above referred to be in all things reversed, and that the interest of plaintiff and appellant be adjudged to be the owner of the lands described in the bill of complaint, and that the defendants be decreed to have no right, title or interest therein and that all patents issued to them or either of them be canceled and held for naught.

EDWARD E. CUSHMAN,
Assistant United States Attorney.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. Jan. 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 30th day of January, 1902, there was duly filed in said court in said cause a petition and claim of appeal, in the words and figures, following to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant and Appellant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.

No. 551.

Petition and Claim of Appeal.

Comes now the above-named plaintiff and appellant, by Edward E. Cushman, Assistant United States Attorney, and deeming itself aggrieved by the order, judgment and decree made and signed herein on the 1st day of August, 1901, and entered and filed herein on the 2d day of August, 1901, hereby appeals from said order, judgment and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors filed herewith, and plaintiff prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order, judgment and decree was made, duly authenticated, may be sent to the United States Circuit

Court of Appeals for the Ninth Circuit and to the clerk thereof by this Court and the clerk hereof.

Dated this 30th day of January, 1902.

EDWARD E. CUSHMAN,
Assistant United States Attorney.

The foregoing petition and claim on appeal is allowed. Done in open court this 30th day of January, 1902.

C. H. HANFORD,
District Judge.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. January 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

And afterwards, to wit, on the 30th day of January, 1902, there was duly filed in said court in said cause an order in the words and figures following, to wit:

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant and Appellant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.

No. 551.

Order as to Transmission of Original Exhibits.

This matter coming on upon the motion of Edward E. Cushman, Assistant United States Attorney, for an order

directing the clerk to transmit the original exhibits in this case, with the record on appeal, to the Circuit Court of Appeals for the Ninth Circuit, and the Court being fully advised and said exhibits appearing impossible of reproduction in printed record;

It is hereby ordered that all exhibits on file herein be transmitted by the clerk of this Court with the record on appeal to the clerk of the Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 30th day of January, 1902.

C. H. HANFORD,
District Judge.

[Endorsed]: Filed in the United States Circuit Court, District of Washington. January 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA, Complainant and Appellant, vs. NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation), Defendants and Respondents.	No. 551.

Citation.

To the Northern Pacific Railroad Company, and the Northern Pacific Railway Company, Defendants and

Respondents in the Above-entitled Cause, and to Crowley & Grosscup, F. M. Dudley, Stevens & Bunn and James B. Kerr, Their Attorneys and Solicitors:

You and each of you are hereby cited and admonished to be and appear at a term of the Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty days from the date of this citation, to wit, on the 1st day of March, 1902, pursuant to the appeal filed in the clerk's office of the Circuit Court of the United States for the District of Washington, in the above-entitled case and action wherein the United States of America is plaintiff and appellant and the Northern Pacific Railway Company and the Northern Pacific Railroad Company are defendants and respondents, to show cause, if any there be, why the decision, judgment and order in said appeal mentioned should not be reversed and set aside and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 30th day of January, 1902.

[Seal of the Court]

C. H. HANFORD,
District Judge.

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.

No. 551.

Acceptance of Service.

Due and full service of the within citation on appeal upon the defendants and respondents is hereby acknowledged by the receipt of a copy of same this 30th day of January, 1902.

CROWLEY & GROSSCUP,
Attorneys and Solicitors for Defendants and Respondents.

F. M. DUDLEY,
Attorneys and Solicitors for Defendants and Respondents.

STEVENS & BUNN,
Attorneys and Solicitors for Defendants and Respondents.

JAS. B. KERR,
Attorneys and Solicitors for Defendants and Respondents.

[Endorsed]: Filed January 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

Clerk's Certificate to Transcript.

United States of America,
District of Washington, } ss.
Western Division.

I, A. Reeves Ayres, Clerk of the Circuit Court of the United States for the District of Washington, do hereby certify the writings hereto attached to be a full, true and correct transcript of the records and proceedings in case number 551, of the United States of America, Plaintiffs, against The Northern Pacific Railroad Company, and the Northern Pacific Railway Company, Defendants, as the same remain on file and of record in my office.

I do further certify the cost of preparing the foregoing transcript to amount to the sum of $49.50; which amount has been included in my quarterly account against the United States.

In witness whereof, I hereunto subscribe my name and affix the seal of said court at my office, in the city of Tacoma, in said District, this the second day of April, in the year of our Lord one thousand nine hundred and two.

[Seal]

A. REEVES AYRES,
Clerk.
By Sam'l D. Bridges,
Deputy Clerk.

In the Circuit Court of the United States, for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Complainant and Appellant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.

No. 551.

Citation.

To the Northern Pacific Railroad Company and the Northern Pacific Railway Company, Defendants and Respondents in the Above-entitled Cause, and to Crowley & Grosscup, F. M. Dudley, Stevens & Bunn and James B. Kerr, Their Attorneys and Solicitors:

You, and each of you, are hereby cited and admonished to be and appear at a term of the Circuit Court of Appeals for the Ninth Circuit to be holden at the city of San Francisco, State of California, within thirty days from the date of this citation, to wit, on the 1st day of March, 1902, pursuant to the appeal filed in the clerk's office of the Circuit Court of the United States for the District of Washington, in the above-entitled case and action, wherein the United States of America is plaintiff

and appellant and the Northern Pacific Railway Company and the Northern Pacific Railroad Company are defendants and respondents, to show cause, if any there be, why the decision, judgment, and order in said appeal mentioned should not be reversed and set aside and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 30th day of January, 1902.

[Seal]

C. H. HANFORD,
District Judge.

In the Circuit Court of the United States for the District of Washington, Western Division.

UNITED STATES OF AMERICA,
Plaintiff and Appellant,

vs.

NORTHERN PACIFIC RAILROAD COMPANY (a Corporation), and NORTHERN PACIFIC RAILWAY COMPANY (a Corporation),
Defendants and Respondents.

No. 551.

Acceptance of Service.

Due and full service of the within citation on appeal upon the defendants and respondents is hereby acknowl-

edged by the receipt of a copy of same this 30th day of January, 1902.

CROWLEY & GROSSCUP,
Attorneys and Solicitors for Defendants and Respondents.

F. M. DUDLEY,
Attorneys and Solicitors for Defendants and Respondents.

STEVENS & BUNN,
Attorneys and Solicitors for Defendants and Respondents.

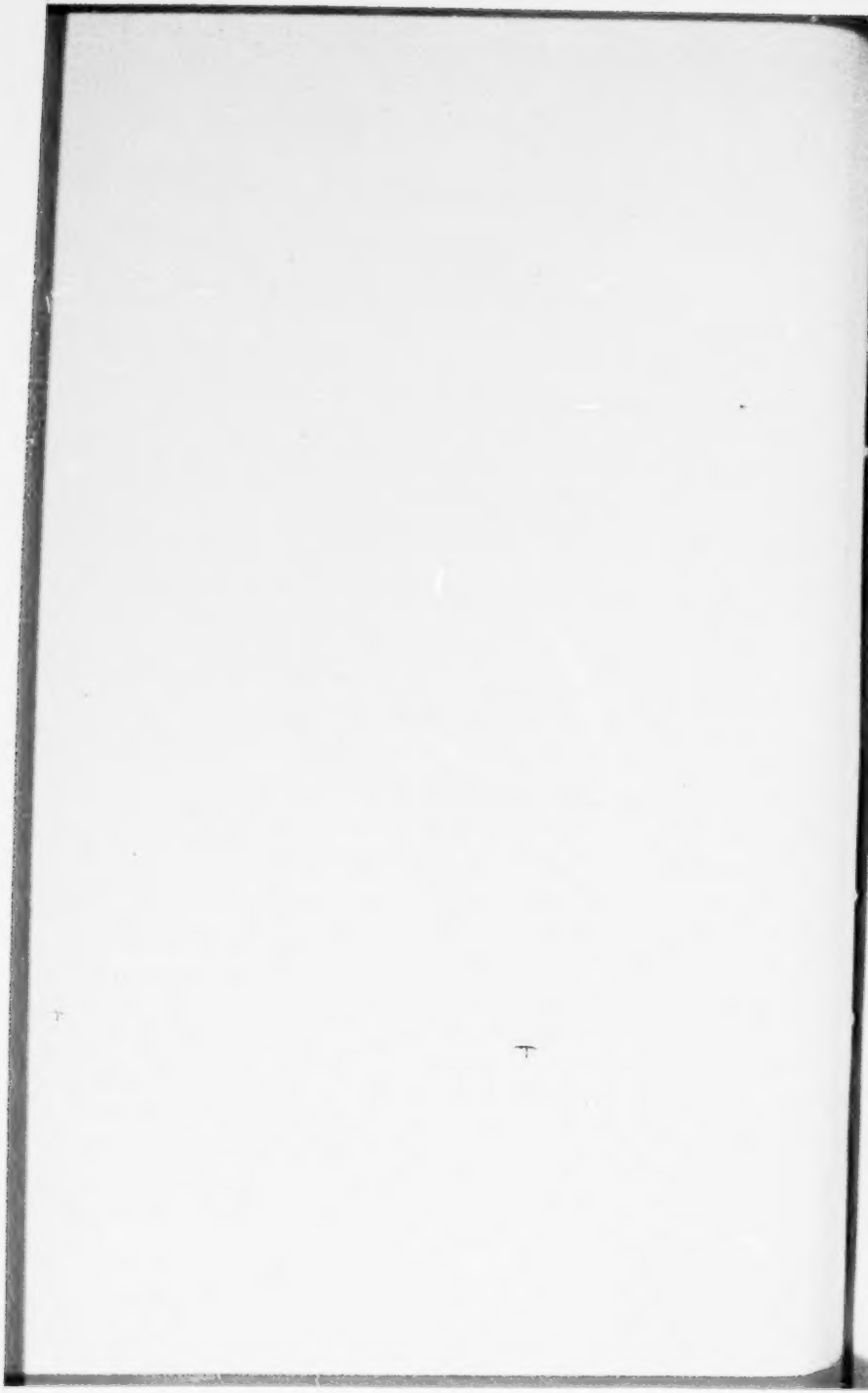
JAS. B. KERR,
Attorneys and Solicitors for Defendants and Respondents.

[Endorsed]: No. 551. In the Circuit Court of the United States for the District of Washington. The United States vs. The Northern Pacific Railway Company et al. Citation, With Acknowledgment of Service. Filed January 30, 1902. A. Reeves Ayres, Clerk. By R. M. Hopkins, Deputy.

[Endorsed]: No. 822. In the United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. The Northern Pacific Railroad Company, a Corporation, and the Northern Pacific Railway Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Washington, Western Division.

Filed April 10, 1902.

F. D. MONCKTON,
Clerk.



164 **Proceedings in the United States Circuit Court of Appeals for the Ninth Circuit.**

165 At a stated term, to wit, the October term, A. D. 1901, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court room, in the city and county of San Francisco, on Wednesday, the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and two.

Present: The Honorable William B. Gilbert, Circut Judge; Honorable Erskine M. Ross, Circuit Judge; Honorable Thomas P. Hawley, District Judge.

THE UNITED STATES OF AMERICA, Appellant,
v.
THE NORTHERN PACIFIC RAILROAD COMPANY, a Corporation, et al., Appellees. } No. 822.

Order of Submission.

Ordered appeal argued by Wilson R. Gay, esquire, United States attorney, and J. A. Munday and C. E. S. Wood, esquires, counsel for the appellant, and James B. Kerr, esquire, counsel for the appellees, and submitted to the court for consideration and decision, with leave to counsel for the United States to file a reply brief within ten (10) days from date.

166 At a stated term, to wit, the October term, A. D. 1902, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the court room in the city and county of San Francisco, on Monday, the 14th day of October, A. D. 1902.

Present: The Honorable W. B. Gilbert, Circuit Judge; the Honorable E. M. Ross, Circuit Judge; and the Honorable W. W. Morrow, circuit judge.

THE UNITED STATES OF AMERICA, Appellant,
v.
THE NORTHERN PACIFIC RAILROAD COMPANY, a Corporation, and THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellees.
No. 822.

Appeal from the United States Circuit Court for the District of Washington, Western Division.

This case having come on to be heard upon the pleadings herein and the agreed statement of facts, upon an appeal whereby it is sought to review the decree of the Circuit Court of the United States for the District of Washington, Western Division, in a suit in equity brought by the United States to cancel patents for land issued to the Northern Pacific Railroad Company, and it
167 appearing to the court that the case presents issues and facts identical with those which were involved in the case of The United States v. The Oregon and California Railroad Company, decided by the Supreme Court of the United States and reported in 176 U. S., 28, with this difference, that the defendant The Northern Pacific Railroad Company is the grantee of both the grants of land, the overlapping portions of which are the subject of the controversy herein, and that this case is ruled by the decision of the Supreme Court in the case above referred to, unless the fact that the Northern Pacific Railroad Company, by reason of being the grantee of both said land grants, is estopped to question the sufficiency of its own maps to designate the boundaries of its grant by virtue of the act of July 2, 1864; and it appearing to the court that an early and final decision of said question is of great public importance, since it involves the rights of a large number of settlers on the lands in controversy, and that this is a case which is appealable to the Supreme Court from the decision of this court;

It is ordered that the following questions of law be, and the same are hereby, certified to the Supreme Court of the Uuited States for its determination:

1. Did the Perham map which was transmitted to the Secretary of the Interior March 6, 1865, and the maps filed by the Northern Pacific Railroad Company in the office of the Secretary of the Interior on July 30, 1870, sufficiently designate as between the grantor and the grantee of said land grant to said railroad company of July 2, 1864, the boundaries of the grant in aid of that portion of the road which was described as the branch via the valley of the Columbia River to a point at or near Portland, in the State of Oregon, so that none of those lands were included in the subsequent grant by the joint resolution of May 31, 1870, in aid of the line of road from a point
168 at or near Portland to a point on Puget Sound?

2. Are the appellees estopped by reason of the filing of said maps to deny, as against the suit of the United States, the sufficiency of the said maps to designate the boundaries of that portion of the grant of July 2, 1864, in aid of said branch line?

3. In view of the facts referred to and recited in the questions above, was it the intention of the joint resolution of May 31, 1870, to include in the grant in aid of the line of road from a point at or near Portland to a point on Puget Sound any of the lands within the place limits of the line so designated on said maps?

THE UNITED STATES OF AMERICA, Appellant,
v.
THE NORTHERN PACIFIC RAILROAD COMPANY, a Corporation, and THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Appellees. } No. 822.

Certificate of Clerk U. S. C. C. A. to Transcript.

I, Frank D. Monckton, clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and sixty-eight (168) pages, numbered from one (1) to one hundred and sixty-eight (168), inclusive, to be a true copy of the printed transcript of record, the order of submission entered on the 28th day of May, 1902, and the order certifying certain questions to the Supreme Court of the United States, entered on the 14th day of October, 1902, and that the same, in connection with original Exhibits "B" and "C," this day transmitted to the Clerk of the Supreme Court of the United States, constitute a certified copy of the record under said order of the Circuit Court of Appeals certifying certain questions in the above-entitled cause to the Supreme Court of the
170 United States.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this 14th day of October, A. D. 1902.

[SEAL.]

F. D. MONCKTON,
Clerk.

13213

171 *Supreme Court of the United States, October term, 1902.*

THE UNITED STATES,
Appellant,
vs.
THE NORTHERN PACIFIC RAILROAD COMPANY ET AL.
No. 477.

On consideration of the motion for a writ of certiorari to bring up the entire record and cause, and that the cause be advanced,

It is now here ordered by the court that said motion be, and the same is hereby, granted, the transcript of record submitted with the motion to stand as a return to the writ, and the cause is advanced and assigned for argument on Monday, October 19th, 1903.

Per Mr. CHIEF JUSTICE FULLER.

NOVEMBER 17, 1902.

O

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 148.

THE UNITED STATES, PETITIONER,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY AND THE NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

CERTIFICATE FILED OCTOBER 30, 1908.
CERTIORARI AND RETURN FILED NOVEMBER 17, 1908.

(18,705.)

(18,705.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 145

THE UNITED STATES, PETITIONER,

vs.

THE NORTHERN PACIFIC RAILROAD COMPANY AND THE NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

	Original.	Print.
Exhibit A—Certified copy of map of the United States issued by the General Land Office, and showing a line of route surveyed by Governor Stevens; also marked map of general route of 1865—Perham's map	1	1
Order to file Exhibit B	3	3
Stipulation to file Exhibit B	4	3
Exhibit B—Certified copy of map showing location of the Northern Pacific railroad from its initial point on Lake Superior, in Wisconsin, to the Columbia river, in Washington Territory	5	4
Order to file Exhibit C	8	5
Stipulation to file Exhibit C	9	5
Exhibit C—Certified copy of map showing the location of the Northern Pacific railroad from its initial point on Puget sound via the valley of the Columbia river to the mouth of the Walla Walla river	10	6
D—Certified copy of map showing a portion of the constructed line of the Northern Pacific railroad, sixty-five miles from Kalama, W. T., northward	14	7

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 20, 1903.

INDEX.

	Original.	Print.
Exhibit E—Certified copy of so much of the original diagram prepared by the General Land Office, and now on file there, as shows the withdrawals which were made for the benefit of the grant to the Northern Pacific Railroad Company on definite location of the grant between Portland, Oregon, and Tenino, Washington.	15	9
F—Certified copy of map showing located line of the Northern Pacific railroad from Kalama, in Washington, to Portland, in Oregon	17	11
G—Certified copy of so much of the original diagram prepared by the General Land Office, and now on file there, as shows the lands affected by the ruling of the Department of the Interior of July 18, 1895, in the case of Spaulding *vs.* Northern Pacific Railroad Company (21 L. D., 57), as modified July 9, 1896 (23 L. D., 70)	19	13

EXHIBIT A.

"L." 4–207. H. K.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Feb.* 24, 1900.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed map of the United States, issued by the General Land Office, and showing a line of route surveyed by Governor Stevens, is a true and literal exemplification of so much of the official map on file in this office, as it purports to represent.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

Seal United States General Land Office.

BINGER HERMANN,
Commissioner of the General Land Office.

(Here follows map marked p. 2.)

[Endorsed on back of map:]

A. U. S. *vs.* N. P. R'y Co. U. S. circ. court. # 551. Exhibit A. . R. Gay, U. S. att'y; James B. Kerr, for def'ts. Filed July 1, 1901. Reeves Ayres, clerk, by A. N. Moore, deputy.

J. No. 822. U. S. circuit court of appeals for the ninth circuit. xhibit A. Received May 22, 1902. F. D. Monckton, clerk, by eredith Sawyer, deputy clerk.

Map of general route of 1865. Perham's map.

Received from Josiah Perham, president N. P. R. R., March 6, 65.

EXHIBIT B.

3 United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Appellant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, a Corporation, and Northern Pacific Railway Company, a Corporation, Appellees.

Upon the stipulation of the parties, it is hereby ordered that the clerk of this court be and he is hereby directed to file the attached map marked Exhibit "B" as of May 28th, 1902.

Dated August 5, 1902.

By the court,

WM. W. MORROW, *Judge.*

4 United States Circuit Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Appellant,
vs.
NORTHERN PACIFIC RAILROAD COMPANY, a Corporation, and Northern Pacific Railway Company, a Corporation, Appellees.

Whereas, in transmitting the record on appeal in the above entitled cause, that certain map marked Exhibit "B" and referred to in paragraph ten of the agreed statement of facts herein, said map showing the general route of the line of said Northern Pacific railroad, commencing at a point in the State of Wisconsin at the mouth of the Montreal river, thence westerly across the States of Wisconsin and Minnesota and the Territories of Dakota, Montana, Idaho and Washington, to the mouth of the Walla Walla river in Washington Territory, was lost or destroyed,

It is hereby stipulated by and between the parties hereto that the attached map, duly certified by the Commissioner of the General Land Office, is a true and correct copy of said map so lost or destroyed, and that an order may be entered herein upon this stipulation directing that the same be filed as a part of the return on appeal in this cause.

Dated August 1st, 1902.

UNITED STATES OF AMERICA, *Appellant,*
By EDWARD E. CUSHMAN,
Ass't U. S. Att'y & Its Counsel.
NORTHERN PACIFIC RAILROAD COMPANY AND
NORTHERN PACIFIC RAILWAY COMPANY, *Appellees,*
By C. W. BUNN,
JAMES B. KERR, *Their Counsel.*

5 "F."

4-207.

W. P. J. S. S. I

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *July 24th*, 190

I, Binger Hermann, Commissioner of the General Land Office hereby certify that the annexed, being copy of map showing lo tion of the Northern Pacific railroad from its initial point on La Superior in Wisconsin to the Columbia river in Washington Ter tory is a true and literal exemplification from the original on in this office.

Seal United States General Land Office.

In testimony whereof I have he unto subscribed my name and caus the seal of this office to be affixed, the city of Washington, on the da and year above written.

BINGER HERMANN,
Commissioner of the General Land Office.

(Here follows map marked p. 6.)

[Endorsed on back of map:]

B. $12.00. Map of general route of the Northern Pacific R. R. from Montreal river, Wis., to the Walla Walla, W. T.
G. L. O. Map 1, tube 37. Received from Secretary of Interior with letter of Aug. 13, 1870, r'c'd same day. W. K. M. Same with-drawn by letter of Sept. 15, 1870. $\frac{1}{10}$. Map 1, tube 37.

7 [Endorsed:] D. No. 822. U. S. circuit court of appeals for the ninth circuit. Exhibit "B." Filed Aug. 5, 1902. F. D. Monckton, clerk, by Meredith Sawyer, deputy clerk.



MAP(S) IS/ARE TOO LARGE TO BE FILMED

EXHIBIT G.

19 F. 4–207*a*. S. S. M.

R. F. F.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 15, 1900.

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of so much of the original diagram prepared by this office, and now on file herein, as shows the lands affected by the ruling of the Department of the Interior of July 18, 1895, in the case of Spaulding *v.* Northern Pacific Railroad Company, (21 L. D., 57), as modified July 9, 1896, (23 L. D., 70).

Seal United States General Land Office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

BINGER HERMANN,
Commissioner of General Land Office.

(Here follows map marked p. 20.)

[Endorsed on back of map:]

G. J. No. 822. U. S. circuit court of appeals for the ninth circuit. Exhibit G. Received May 22, 1902. F. D. Monckton, clerk, by Meredith Sawyer, deputy clerk. G.

21 (Endorsed:) U. S. A. *vs.* N. P. R'y Co. Delivered to U. S. marshal, N. D. Cal. No. 822. U. S. circuit court of appeals for the ninth circuit. Original Exhibits A, D, E, F, & G. Received May 22, 1902 & delivered to U. S. marshal N. D. Cal. F. D. Monckton, clerk. By Meredith Sawyer, deputy clerk. Department of Justice. Northern district of California, return in 5 days to U. S. marshal's office, San Francisco, California. Official business. Penalty for private use, $300. James H. McKenney, Esq., clerk, Supreme Court U. S., Washington, D. C.

22 [Endorsed:] File No. 18,705. Supreme Court U. S., October term, 1903. Term No. 145. The United States, app't & petitioner, *vs.* The Northern Pacific R. R. Co. *et al.* Original Exhibits A, B, C, D, E, F, & G. Received from U. S. marshal, N. D. of Cal. Rec'd Nov. 4, 1902.